



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>



Ireland
510
S552

Bt. from L Johnson



Owen Wynne

AW

L. Eng. B 75 e. meetings

~~U.K.~~
~~rel. 5/0~~
5552

~~OW.U.K!~~
~~680.5~~
~~5552~~





A
REPORT
OF THE
SPEECHES
OF
CHARLES KENDAL BUSHE, Esq.
(*HIS MAJESTY'S SOLICITOR GENERAL,*)
IN THE
CASES
OF
EDWARD SHERIDAN, M. D.
AND
MR. THOMAS KIRWAN, MERCHANT,
FOR MISDEMEANORS
ALLEGED TO BE COMMITTED IN
VIOLATION
OF THE
CONVENTION ACT.

TO WHICH ARE ADDED,
THE LATE CHARGE OF THE
LORD CHIEF JUSTICE DOWNES;
AND THE
ACT OF PARLIAMENT.

DUBLIN :
PRINTED FOR M. N. MAHON, 116, GRAFTON STREET ;
And to be had of all the Booksellers.

1812.



THE
SOLICITOR GENERAL'S
SPEECH,
ON
DOCTOR SHERIDAN'S TRIAL.

GENTLEMEN OF THE JURY,

I OFFER myself to your attention, with very little hopes of engaging it. You have witnessed such displays of a splendid eloquence—so many enthusiastic appeals have been made to your passions ;—you have been so dazzled by light, and so heated by fire, that I must, at least, wait until the temperature of your minds shall have cooled—I must allow you to recover from the intoxication of your feelings, or I must despair of making any impression by an address, in which, it is my determination, to confine myself exclusively to the only two topics, which seem to have been forgotten this day ;—at least they seem to have been thought

of comparative insignificance—the law and the facts of the case now before you.

Gentlemen, it is not my inclination, or my duty, and I disclaim the right to address you upon any of those popular topics, which have been so laboriously and passionately urged by the Traverser's counsel.—I recollect the place in which I stand—I know, that I am in a court of justice, and not in a house of parliament. I shall not stop to enquire how far those Gentlemen may have abused that latitude of discussion, which is permitted to those who defend an accused man. I wish not to abridge the fair exercise of such a privilege—although I may be allowed to observe, that it has been indulged in this day, without stint, and carried to its utmost limits. Be that as it may, a colder duty devolves upon me—I prosecute the man whom they defend, and God forbid, that in doing so, I should appeal to any thing but your understandings; or, if I had the talent of perverting your minds, through the medium of your prejudices—that I should avail myself of such a power, in the prosecution of the individual now upon trial, or any other man. You will give me credit, Gentlemen, for the wish to discharge my duty, and not to transgress it; and I am not willing to impute to you a different intention. I am sure, that it is unnecessary to remind you, that you are not impannelled to decide upon those great political and constitu-

tional questions, which have been so much agitated this day—that you are not *legislators*—but *jurors*; and that your oaths bind you to a fair verdict, between the Crown and the Traverser. But it has become very necessary to observe upon the confusion of jurisdiction, which has been contended for this day; and the very unfair attempts, which have been made, to induce you to usurp the authority of the Court. Gentlemen, your exclusive province is to decide upon the *facts*, in controversy between the parties; instead of which, you have been clamorously called upon to interpret the *laws* of the land. The mummerly of sending up into a jury-box, a dozen copies of an act of Parliament, has been resorted to, and you have been called upon to decide upon its policy, as if you were *senators*, and to construe its enactments, as if you were *lawyers*. You have been told, that its provisions are difficult of interpretation—that learned counsel have differed upon them; and it has been objected to the Convention Law, that it requires professional astuteness to expound it:—and yet the same advocates call upon twelve respectable citizens, to resolve, upon their oaths, all those intricate and entangled questions, as if your habits, or your education, or your studies, enabled you to decide them. If this be fair, and justifiable in the Counsel for the Traverser, it would not, at least, be fair in me; and I protest solemnly, that if

I knew a popular topic, upon which I could mislead you upon the law, I would not urge it to you—and I assure you, that in what I shall address to the Court, upon the Convention Act, I shall think myself precluded from directing a single observation, or a single look to the jury-box.

I know, Gentlemen, that we live in extraordinary times ; I know that factious and wicked men have taken the most unjustifiable means to pre-occupy and mislead the public mind—I know that the press has overflowed with the most audacious and libellous publications, presumptuously dictating to the Judges of the land, in the discharge of their duty, and inculcating upon Juries, a contempt for the authority of the Court ;—I know that county meetings have been convened throughout the island, that Country Gentlemen might enlighten the courts of justice, by their readings upon acts of Parliament ;—and I know that the Keeper of the Great Seal has been taught the law by a Justice of the Peace. But, Gentlemen, I trust in God, that those monstrous and alarming novelties may never find their way within the walls of a court. They will become the agitators, and the demagogues out of doors, who, without such practices, could not inflame, or mislead the public mind ; but I trust that the temple of justice may never be profaned by doctrines so offensive to the principles

of the Constitution. That Constitution defines with rigid exactness, the respective duties of the Bench, and the Jury-box. Every constitutional mind is appalled by the alarm which is excited, by confounding the functions of those contiguous tribunals. Every one would be shocked by the notion, that the Judge should interfere with the Jury's right to decide upon the *fact*, and yet it is not more revolting to constitutional maxims, than that the Jury should arrogate to themselves to pronounce upon the *law*.—They are, equally, encroachments, and invasions upon our pure administration of public justice, and if ever they be permitted, woe to the Constitution; it could not survive such an assault. What is there in the Constitution, the subject of so much eulogy and declamation this day, so valuable, as the administration of justice? We love the Constitution, because it gives us, for the preservation of public peace, and the adjustment of civil rights, a perfect administration of justice, unknown to other countries, which, in its turn, supports, maintains, and preserves that Constitution. Woe then to that Constitution, (I borrow the strong exclamations of Mr. GOULD) woe to it, when its first principle is invaded, and its corner stone subverted. I make every allowance for the advocate;—I know how much his duty to his client demands from him.—He may stand excused for calling upon you, for this preposterous usurpation of the Court's authority,

but you could not stand justified, if you obeyed the call. If this were a civil action, if a question of property depended between two parties, should the counsel call upon you to break away from the Court, and construe a limitation in a deed, or a devise in a will,—should you not laugh at them? What then is the difference? If you would not have a right, in the one case, how can you in the other, or does a trial of this nature warrant your assumption of power, because, not the *property* of your fellow-citizens, but the *peace* of your country is at stake? If any man,—not an advocate,—gave you such advice, would you consider him as a friend;—and when an advocate gives it,—though you may forgive him for his zeal,—will you act upon his counsel? And yet, Gentlemen, if this be justifiable, where is the confusion to stop?—Why have they not called upon the judges to decide upon the *weight* of the evidence, and the *credit* of the witnesses? Why have they stopped half way, in the discharge of their duty; and when they threw the *statute* into your *box*, why did they not send up the *issue* to the Bench?

I own that I am warm upon the subject, and anxious to establish this distinction. No man, attached to the constitution or acquainted with the laws of his country, can be indifferent upon such a topic:—but I am more—I am interested in it. My Right Hon. and Learned Friend, and

myself,—as the sworn advisers of the Crown in matters of law,—have given our opinions upon the construction of this statute, when called upon to do so;—and if we have been wrong, in that opinion, we are deeply responsible.—Of my own opinion, I think with unaffected humility; when it is supported by his, I feel an honest confidence, that it is not mistaken; but even that confidence, I feel, not without deference to those learned and respectable persons, who may have seen the matter, in another point of view. I expect from them the same charity, and the same fairness. They will not impute to us more, than error of judgment; and if we are mistaken, let us stand rebuked,—though not abashed, because no one will ascribe more than mistake to us. Let us stand rebuked, I say, but by whom? Who is to judge between us, and those, who differ from us?—Are we, and our characters, at the mercy of a Jury, usurping the interpretation of the law?—Are we to be judged by the presumptuous nonsense of Newspaper criticism? Is our knowledge of the laws of our country to be appreciated by the ravings of Country Gentlemen, declaiming upon acts of Parliament?—God forbid!—We appeal, from such arrogated and audacious tribunals, to you, my Lords, the sworn Judges of the Land—You are to interpret this Act of Parliament, upon your oaths, and your high responsibilities. By you, let us be judged,—we disclaim all other

authority—if you say, that we have been right, we have done our duty to our Sovereign, and our Country:—If we have erred, I repeat it again, we are deeply answerable.

To decide this question, and to have the law ascertained, and the public mind quieted upon this important subject, have those prosecutions been instituted:—not for the purpose, as has been unjustifiably asserted,—of persecuting Doctor *Sheridan*, or of subjecting any honest man to punishment. Doctor *Sheridan* has been warmly panegyricized, and though I have not the honour of knowing him, I doubt not, that he deserves the eulogies, which, in a trial of this nature, have been so unnecessarily heaped upon him. I will go further, and say, that I doubt not but that he conceives himself to have acted justifiably, and violated the laws of his Country, without any intention of doing so. I can well believe, that he, and other worthy men, have acted under those mistaken impressions, which the misrepresentations of the Convention Act have suggested to so many;—but it is not the less true, that if he has violated that law, he must be convicted. No man can be so weak or malignant, as seriously to impute to Government the wish to inflict upon him those miserable sufferings, which have been anticipated, and deplored with so much misplaced pathos—example, and not punishment, is our object. If

he be innocent, in point of fact, and has been falsely accused ; nay, if a reasonable doubt can be entertained of his guilt, or if you shall hear from the Court, that, in point of law, he has not violated the statute, I trust, that you may acquit him. None of his advocates, or friends, will rejoice in such an event, more than myself—but if you should acquit him, let your acquittal rest upon some such solid principles as I have suggested, which will justify you to your Country, your consciences, and your God. I only deprecate that most formidable of evils,—characteristic of bad times,—a popular verdict, which has been clamorously demanded from you this day,—a verdict which confounds every principle dear to public justice, and exhibits a Jury in the disgraceful act of trampling on the laws, which they are sworn to administer.

Let me now call your attention to those facts, upon which you are bound to decide. Doctor *Sheridan* is charged with having participated in an election at *Liffey-street* Chapel, on the 31st of *July*, of five members, to represent the Catholics in a Committee, (appointed on the 9th of *July*, at an Aggregate meeting,) on the pretence of petitioning Parliament, for a repeal of the penal laws. In order to establish that fact, two witnesses have been produced, to prove what occurred at the meeting in *Liffey-street* Chapel, who had been sent there, for the purpose of

observing what should pass. If they have sworn truly, they have proved the charge, in the most distinct and satisfactory manner ; and upon comparing their testimony with that of Mr. *Huddleston*, you will observe, that the number of parochial delegates, whom they represent to have been elected on the 31st, exactly corresponds with the number, which he states to have been announced on the 9th of *July*. Those persons have been cross-examined, with the utmost severity, and have been treated, as if their story had been, from the beginning to the end, a shameful fabrication ; every artifice has been practised to embarrass, or confound them—they have been exposed to that unequal contest, in which persons of their rank, or indeed, of any rank, are exposed, when opposed to a professional antagonist. The vulgar cry of spy and informer has been halloed against them ; and any man, who heard the cross-examination, would believe, that the Counsel had been instructed to deny the existence of any meeting at *Liffey-street* Chapel, upon that day. But, Gentlemen, no witnesses have been produced to impeach their moral character, or contradict their testimony ; they swore, that Mr. *Kirwan* and Dr. *Burke*, and many more persons, now in this Court, were present, and partook in the election. If their story were a fabrication, why not produce those Gentlemen to contradict it ? Why not prove, by them, that they were not

present at any such meeting, or that if they were, Doctor *Sheridan* was not? I need not pursue this argument further—the Counsel, who was instructed to controvert the fact, has saved me the trouble; he asked those witnesses, whether the resolutions which Dr. *Sheridan* proposed, at that meeting, were not reduced to writing, and actually put his brief into their hands, calling on them to read the resolutions, which really passed. Well, then, we have got so far, as that there was such a meeting: that Dr. *Sheridan* presided at it—and what remains? Why, a question, upon the accuracy of their recollection, as to the substance of the resolutions. Gentlemen, unimpeached men have given you their oaths upon that fact, and who has contradicted them? Did you not, yesterday, hear the whole bar of the *Traverser's* Counsel exclaim in chorus, that they had 500 witnesses to contradict them, and that the resolutions were not as stated. What has become of the 500? Not one of them has been produced;—Mr. *Kirwan* is by my side; Doctor *Burke* is in my eye,—they were here yesterday—surely, if they had been produced, and had stated, upon their respectable characters, that the Crown's witnesses had been mistaken;—if the original of the Counsel's brief, containing the genuine resolutions, had been exhibited, and demonstrated the mistake; surely you would not have been left in your present darkness;—but no

such light is afforded to you. Witnesses in Court, who could contradict ours, are withheld—the written document in their hands is suppressed; and you are called upon rashly to disbelieve, what they will not controvert;—to impute, by your verdict, perjury to the witnesses for the Crown, and to declare upon your oaths, that you do not believe, that which they will not deny. Gentlemen, I am at a loss, in discharging this duty, to discover, what I am to reply to—one Counsel asserts his client's innocence, in point of *fact*—the other glories in his crime, in point of *law*—nay, the one half of each Counsel's speech is an answer to the other: they alternately rail against the witnesses, or declaim in favour of the offence. What has been their conduct, as to Mr. *Huddleston*, the remaining witness? What has been left unsaid, or unattempted, in his cross-examination? Two hours of precious and irrecoverable time have been consumed, in attempting to discredit a witness, who has only proved the proceedings of the Aggregate Meeting, of the 9th of *July*, at which Lord *Fingall* presided. No suborned miscreant, who had attempted to take away an innocent man's life, was ever treated with more asperity—no advocate, retained for a felon, at the *Old Bailey*, ever plunged more desperately through a cross-examination, trembling for the wretch, whose only defence was, the hope of confounding his prose-

cutor, or supporting his *alibi*. The man's feelings were agonized—he was stretched on a rack and tortured—his private life anatomized—his most secret sentiments scrutinized—he was called upon to swear to his religious opinions; and, even in this Court, public disgust was clamorously excited, by exhibiting him as a recreant from the religion of his ancestors—his birth, his connexions, his country, his faith, his morals, his circumstances, all ransacked—all exposed. He was asked was he not a Deist, was he not an Atheist, had he not been a Catholic, was he not a Protestant, had he not been an Officer, was he not a Reporter for the Newspapers, was he not an *Englishman*—nay, to crown the climax, was he not a *Cambridgeshire*-man, had he not taken notes, and lost his memory; had he not wished for an employment, and lost his conscience. What would any stranger, who came into this Court, have supposed, who had looked upon the victim on the table, and heard, and seen the Counsel at the Bar? Would he not have imagined, that the most shameful fabricator of the most impudent lie was undergoing well deserved chastisement for his falsehood? What did the Counsel himself say to him? Sir, I apprise you that I am shaking your credit. Gentlemen, why so shake his credit? It required not the storm of Mr. GOOLD's eloquence to subvert it—a breath from Lord FINGALL would have dissipated

it. That Noble Personage sat under your box at the moment, and sits there now—why *did* he not, why *does* he not come forward and assert, either that such a meeting did not exist, or that he did not preside in it, or that no such resolutions were passed? His *oath* I should not require; were he on his *honour*, (knowing, as I do, his high reputation for public, and for private worth,) to have so declared, I protest for one, that I should abandon so much of this prosecution, as depended upon any assertion, which he should so contradict: I see other noble and honorable men about me,—all alleged by *Huddleston* to have been present on that occasion. Why have none of them come forward? How do they and my Lord FINGALL reconcile it to their feelings, to sit by, and hear it asserted, that the witness has sworn falsely, in charging them with having assisted at the meeting of the 9th of *July*? Will they say, that they were not at such meeting, or will they have it understood, that they and their friends struggle not for justification, but impunity? Is it the fact of the assembly that is controverted? I have not a right to appeal to public notoriety—I must observe upon evidence merely—but I may observe also upon the want of it; and I ask again, if that fact be denied, why not produce those persons most capable of contradicting it? I ask, into what has shrunk the pompous triumph of the defence? I

ask, what has become of the reiterated assertions, within and without this Court, of the legality of the delegation? It is reduced to a miserable denial of the fact, without the production of a witness to support it. Perhaps it will be said that the meeting was not denied, but that the purport of the resolutions has been misrepresented by *Huddleston*. With what an argument has Mr. GOULD furnished me upon this topic? Do you remember the zeal and the fire, I had almost said, the rage, with which, after labouring to shew, that there was no such assembly at all, he addressed the witness, and said:—Sir, *upon your oath, were not all the resolutions passed that day, reduced to writing, and have they not been published with Lord Fingall's signature in every newspaper in Dublin?* Such was the question, Gentlemen, for God's sake, what has become of all the newspapers in Dublin? Why has not the secretary, who transcribed the resolutions, and sent them to the press, been produced? I ask again, why the noble chairman, now sitting before me, and who signed them, has not been produced? The word *tutored*, has been warmly, I shall not use a stronger phrase, certainly with more warmth than decorum, applied to the witnesses for the Crown. It is a vulgar and a silly insinuation, which the counsel has been instructed to make. Who is so absurd, as to suppose, that those who carry on these prosecutions,

would condescend to such practices ? I have no fear, in the face of our profession, and the public, to offer our characters, as a refutation of the slander ? What interest has any man in the conviction of Doctor *Sheridan*, that he should achieve it by subornation ? What motive can be imputed to any person, acting for the Crown, but a wish to assert the law, and maintain the public peace ? Those, who deal in such insinuations, would do well to remember the nature of their own defence, consisting in clamorous invective against the credit of witnesses, whom, if false, they could contradict, and will not. Let me not be answered, by the trite observation that Lord FINGALL and his friends, and Dr. *Burke*, and Mr. *Kirwan*, could not be produced, because they could not be asked a question, the answer to which might criminate themselves. The reply is obvious. If the witnesses for the Crown have sworn falsely, those gentlemen could not criminate themselves, their answers must acquit them and Doctor *Sheridan*; and it is only upon the supposition, that the testimony for the prosecution is true, that any danger could result from producing them. Suppose that the witnesses for the Crown are base and infamous, yet the most base and infamous men may swear truth. Is there no corroboration of their evidence, in the silence of those, who could contradict them ? Why has no one been produced to account for,

or deny the coincidence alleged by them, that on the 9th of *July*, Lord FINGALL announced a convention of a particular kind, and that in twenty-two days afterwards an election takes place in *Liffey-street*, returning for *Mary's* parish the exact same number of delegates, which had been required for every parish by Lord FINGALL's proclamation? Why has the defence been confined to unfounded assertion, and popular clamour? I ask you again, what is the fair result of such a defence? I ask you, will you venture, upon such a defence, to convict the Crown's witnesses of perjury?—I ask you, will you venture to hang a doubt upon their testimony, when the Traverser's counsel could have removed every doubt, and refused to do it? I tell you again, in anticipation of what you shall hear from the Bench, that if you entertain a doubt upon the fact, you ought to acquit; but pause,—pause awfully, before you entertain it. It must be no light, capricious doubt; such as man finds not as a justification, but seeks for as an excuse. It must be such a doubt, as a sound understanding can suggest to an honest heart. If you can entertain such a doubt, acquit. I will not use the confident language of the Traverser's counsel; I will not say, find such a verdict, if you dare; but I say, find it, if you can.

My Lords, I turn from the Jury to the Bench,—to address you, upon the law of the case. I have little more to do, than to go over the same ground which the Attorney General has trod before me, at the risque, common to all who follow him, of effacing his impressions. Mr. *Burrowes* has, however, so strenuously contended for a different construction, that I am bound to advert to his argument, and, if I can, refute it. He has reasoned on three several propositions: First, That the delegation, prohibited by the statute, is one for general representation, and not one for a particular purpose. Secondly, That the word *pretence* means *false pretence*, and not real purpose, and that if the object of the delegation be *really* to petition, no offence is committed: and Thirdly, that by the proviso in the statute, the right of petition, by the means of delegation, is saved. I shall invert his order, and beginning with his third proposition, which relies upon the proviso, I shall only remark, that it must stand or fall with his second, and abide its fate, because if it be admitted that *pretence* means real purpose, then his construction of the proviso, which, he says, saves something out of the enactment, becomes nugatory; for then the statute would prohibit real petitioning by delegation, and the proviso would save it, that is, the statute would do nothing. He must, therefore, shew that *pretence* means *false pretence*, or

the proviso is of no avail to him. In considering that proposition, I shall not resort to poets or dictionaries for the meaning of the word, but being in a court of law, shall at once call your attention to an act of parliament, enacted in *England*, 13. Car. 2. 5. upon the same subject, and from which our Convention Act has been copied, with as little variation as the different circumstances of the two countries would permit. The object of both was to restrain the abuse of the right of petitioning. In *England*, the mischief to be prevented was the collection of *mobs*; in *Ireland*, the assembling of self-created parliaments and *conventions*. Every one, who knows the history of the two countries will, admit that such were the respective evils at the times those laws were enacted; and it will be seen that they were made in *pari materia*. The word *pretence* is used in both; and if I can shew, that in the English act, it does not mean *false* pretence, but purpose and object, whether real or fictitious, I certainly shall have gone some length in ascertaining its signification in the *Irish* statute, which has been borrowed from the *English*. The title of the *English* act is, “ An act against
 “ tumult and disorders, upon *pretence* of pre-
 “ paring or presenting public petitions or other
 “ addresses to his Majesty or the Parliament.” The title of the *Irish* act is, “ An act to prevent
 “ the election or appointment of unlawful as-

“ assemblies, under *pretence* of preparing public
 “ petitions, or other addresses to his Majesty or
 “ the Parliament.” The preambles are almost
 (considering the difference of objects,) the same.
 Now the very object of the *English* act is to li-
 mit the number of persons who shall prepare or
 present petitions to the King or Parliament, to
 twenty in the one case, and ten in the other ; and
 it has been the law of *England* from that day to
 this, that no greater numbers can prepare or pre-
 sent petitions, however real : Now, in this act,
 the word *pretence* is used exactly as in the *Irish* ;
 “ no persons whatsoever shall repair to the
 “ King or Parliament, *upon pretence* of present-
 “ ing or delivering any petition, &c. &c. above
 “ the number of, &c. &c.” It will remain, then,
 for those who can, to shew, that in the two sta-
 tutes the same word is to have two different
 meanings. If it be asked, what meaning is to
 be given to the proviso in the *Irish* statute, the
 answer is obvious. It is not an exception or
 saving out of the act of any thing enacted in it ;
 for whatever is so excepted is to be found in a
 distinct saving in the enacting clause ; but it is
 such a provision as, your Lordships well know, is
 to be found in several statutes, in the nature of
 a protestation, to exclude an unjust conclusion.
 It is as much as to say, let no one suppose that
 this act invades the sacred right of petitioning.
 It only enacts that the right of petitioning shall

not be exercised through the medium of delegated assemblies.

Let me now call your attention to the absurdity which must follow from giving to *pretence*, in the Irish statute, the meaning of *false pretence*. The first section declares that all assemblies, committees, or other bodies of persons elected, or in any other manner appointed to represent any portion of the people, under the pretence of petitioning for, or in any other manner, procuring an alteration of matters established by law, are unlawful assemblies; and it shall be lawful for any mayor, sheriff, justice of the peace, or other peace officer, and they are thereby required to disperse all such unlawful assemblies, and, if resisted, to enter into the same, and apprehend all persons offending in that behalf. Now if *pretence* means false pretence, no magistrate would be warranted in dispersing a meeting, really and *bona fide* assembled for the purposes of petitioning, and who is to decide that delicate and difficult question? Can it have been the intention of the legislature to entrust such a decision to any peace officer; and if so, how is he to decide it? How is he to ascertain, whether the alleged petition be real, or fictitious, except by permitting the assembly to meet, and watch its conduct until it shall have concluded its business? That is, suffer it to adjourn *sine die*, in order to determine, whether he ought to disperse those

who have ceased to assemble. The statute also authorizes him, if resisted, to enter into the meeting; if, then, *pretence* means false pretence, the legality of his entry must depend, not upon his inference from his observations of the proceedings,—for, upon this supposition, he has not been allowed to observe them,—but upon the soundness of his conjecture, as to what he should observe, if admitted;—that is, he will be a trespasser, or not, according to the guess which he may make outside the door, as to the real object of the meeting within;

The second section is not pointed at the assembly when met, but at those, who in any way partake, or concur in the election to it, and they are declared guilty of a high misdemeanor, nay, this is extended to all those, who publish or give notice of such an election. Now, announcing the election, or partaking in it, are clearly offences, which may be committed, and completed, although the assembly itself should never meet; but according to the construction contended for, they could never be prosecuted, until not only the assembly had met, but until it should be ascertained by its meeting, that its pretence of petitioning was fictitious; that is, the present prosecution is premature. It should have lain in abeyance until the Catholic Committee had met, and until the nature of its institution had been proved, by the course

of its proceedings. No interpretation of a statute can be sound, which leads to such absurdities; and I cannot try this reasoning by a fairer test, than by supposing, that all which has been urged in argument, were inserted in the statute. If nonsense should be the result, the argument cannot be good. Suppose the act to have stated, that all such assemblies were at the first moment unlawful, provided that it should appear, after their sittings were concluded, that their petition were fictitious. Suppose it enacted, that every peace officer should disperse them, provided always, that he was of opinion, after they had met, that their petition was fictitious. Suppose it enacted, that every peace officer should be at liberty to enter the meeting, provided that, before he entered it, he should be convinced, that no real petition was to be proposed in it. Suppose it enacted, that merely to publish a notice of an election for such a meeting, should be a high misdemeanor, provided always, and not otherwise, that thereafter it should appear, that no real petition was the object of the meeting. I cannot conceive a fairer test, by which to try, and decide the construction of this act.

Look again at the saving in the statute, for the Houses in Parliament and Convocation. If *pretence* means false pretence, then the legislature has declared, that Parliament alone shall

meet on the false pretence of procuring an alteration of matters established by law. Look at the words, "under *pretence* of petitioning for, "or in any manner procuring, an alteration of "matters established by law in church and "state." If *pretence* means false pretence, in the first part of this sentence, which relates to petitioning, it must, in the second, which relates to procuring alteration, and then the meaning will be, that all assemblies are unlawful, except the Parliament, which pretend falsely to procure such alteration, and the necessary inference must be, that all assemblies, except the Parliament, are lawful which profess truly to do so. This absurdity must follow, unless *pretence*, in the same sentence, shall be held to have two opposite meanings.

I come now to Mr. BURNSTOWN's first argument, which, as well as I can understand it, is, that there is a distinction between general representation, and delegation for a particular purpose; and he has endeavoured to establish that distinction, by reading the proceedings of some assembly, against which, he says, this statute was levelled, and which announced an intention to usurp legislative authority, and to change the fundamental laws and establishments of the country; and he says, that such an assembly would be within the act, but that an assembly, for the exclusive purpose of peti-

tibling, would not. I apprehend, that his argument is built upon a sophism, and a mistake of the principles of this law. It is not, as he would suggest, a law against bad objects, to be achieved by the assembly when met. It is a law against the very act of assembling. It is a law founded on the same principles as the *Whiteboy Acts*, in which that rage for associations, which always has been the characteristic of all ranks in this country, is denounced, by declaring it a high crime and misdemeanor, for persons assuming any name, or badge, or designation, not usually assumed by his Majesty's subjects, to assemble, although no act has been committed, or no arm raised. It is a law to *prevent* mischiefs, not to *punish* them when committed—it is a law passed on the recollection of the various conventions, and assemblies, and associations, which had, from time to time, threatened the peace of the country. I go not back to former centuries—the *Dungannon Meeting*, the *Volunteer Convention* at the *Rotunda*, the meditated Parliament at *Athlone*, are fresh in the recollection of many of us. In contemplation of those mischiefs, which representative associations are calculated to produce, was this act framed; and the crime, denounced by it, is complete, whenever a representative body is elected, with the view of procuring a change in matters established by law, though the mode of doing so should be by petition.

Mr. BURROWES seems to think, that in order to complete this crime, legislative authority must be usurped. Does he mean to say, that no assembly is within this act, unless it displaces Parliament, and enacts laws, and imposes taxes? Does he mean to argue, that the Legislature has declared that to be a misdemeanor, which the law had before declared to be high treason? Must the act, which speaks of petitioning Parliament, only apply to assemblies, which have displaced Parliament? What would Mr. BURROWES say of an elected and delegated assembly, if such a one should exist, which, professing to prepare a petition, should sit from *July* to *February*, and, day after day, and week after week, assemble and debate, and do every thing but petition,—which should publish inflammatory and incendiary discussions, upon all political topics; which should mimic and travesty all the proceedings of Parliament,—appoint committees—and receive reports; which should supersede and bestride the Legislature, by the discussion of public, and the courts of justice, by the discussion of private grievances? If such an assembly should exist, would he say that, because it abstained from imposing taxes and enacting laws, it would not fall within the Convention Act;—that its innocence should depend, not upon what it did,—but what it did not;—that its members should not be guilty of a misdemeanor, because they were innocent of treason?

I think, if he said so, he would much mistake the law; I think, if I said that their guilt consisted in such acts as I have supposed, I should mistake it too—we should both be wrong, and our common sophism would be, that we tried the legality of the assembly by the test of its *acts*, and not by the test of its *constitution*. The framers of this law well knew the tendency of such associations as it prohibits—they well knew that worthy and honourable men might engage in them, as I have no doubt that worthy, and honourable, and loyal men would engage in the Catholic Committee, with the purest and the best of motives. But the policy of the law is pointed at the probable mischiefs, and the very preamble of the act is directed to the dangers, which, in the language of the statute, *may* ensue. What man can answer for the intermixture of those very different characters which must find their way into such an assembly? I know that the Catholic Nobility and Clergy, amongst whom are to be found the most respectable of men, were to be constituent parts; but I know that every county was to send ten, and every parish in this City to send five members. Who will answer for the description of persons that must find their way into this motley congregation? It is not from such men as Lord Fingall, and Lord Southwell, and Sir Edward Bellew, and the other honourable men of the Catholic persuasion, that such danger is to be apprehended—short lived, indeed,

would be their influence. Perhaps the worst men would not be the most numerous in this assembly—it signifies not ; a small minority of agitators is always sufficient for mischief. The history of mankind shews that they have always prevailed—in every such assembly they float, and the good are precipitated.—But the policy of this act is not merely pointed at the intermixture of bad, but the degeneracy of good characters. What man can answer for himself, in going into a self-constituted political society? his first steps are deliberate ; his first motives are good ; his passions warm as he proceeds ; the applause, never given to moderation, intoxicates him ; the vehemence of debate elates, and the success of eloquence inflames him ; he begins a patriot, he ends a revolutionist. Is this fancy or history ? I well remember, who can forget—the first National Assembly of France ? Composed of every thing the most honorable, gallant, venerable and patriotic in that kingdom ; called together for the noblest and the purest purposes, the Nobility and the Prelacy, united with the representatives of the people, and the three estates promised the regeneration of the country. What was the result ? The wise, and the good, and the virtuous were put down, or brought over by the upstart, and the factious, and the demagogue ; they knew not the lengths they were going ; they were drawn on by an increasing attention,—step after step, and day after day,—to that vortex in which have been

buried even the ruins of every establishment, religious and political, and from whose womb has sprung that colossal despotism which now frowns upon mankind. What has become of that gallant Nobility? where are the pious Prelates of that ancient kingdom? one by one, and crowd by crowd, they have fallen upon the scaffold, or perished in insurrection. Some—less fortunate—drag out a mendicant exile in foreign lands; and others, condemned to a harder fate, have taken refuge in a Tyrant's Court, and are expiating the patriotism of their early lives, by the servility of their latter days.

My Lords, and Gentlemen of the Jury—I have digressed involuntarily, I hope not irrelevantly, from the argument, upon the law of this case, to the consideration of the policy of the statute. It was necessary, for nothing has been more misunderstood; it has been foolishly and wickedly asserted, that this statute and these prosecutions have been levelled at the Roman Catholic cause; the charge is false; if this act were violated by any other class of men in the state, whether Protestants, Presbyterians or others; I know the fairness and the impartiality of my Learned and Right Honourable Friend to be such, that the religion which they professed would never have shielded them from prosecution. It has been clamorously urged, that the Government has declared war against the subjects' right

of petitioning; which Mr. Barrowes has insisted is illimitable, and, like the freedom of the press, not subject to previous restraint, and only controulable for subsequent excess; this is a most mistaken view of the Constitution: there is no such principle known to our Constitution as those illimitable rights; our Constitution exists by its restraints, its controuls, its checks and balances. The Royal Prerogative is defined within a rigid boundary; the privileges of the Nobles are ascertained by jealous limitations, and, if the rights of the people were not circumscribed, woe be to the people, and woe to that Constitution, which has been this day so eulogized, and so much misrepresented; the state would be disorganized, the democratic part would preponderate, and anarchy would be the consequence. The contrary is new doctrine, the growth of modern and licentious times—such was not the opinion of my Lord SOMERS, and the great men, the Whigs of his day, who, in the Bill of Rights, laid the corner-stone of the Constitution in King William's reign. In that second *Magna Charta* they asserted and established this right of petition, as the birth-right of *Englishmen*; but they did not venture to establish it, except as subject to the restrictions imposed on it by the statute of Charles II. Your Lordships know, that this has been decided by the highest authority,—that when, upon the trial of Lord George Gordon, another opinion was contended for at the bar,

all the Judges unanimously declared that such was the law. That law was never enacted here, but the misfortunes of our country have made another and a different restriction of the right to petition necessary. Those laws speak a common principle, though a different language. In *England*, the people are told, that even the inestimable privilege to petition shall not be a pretext for a *mob*; and in *Ireland* they must be told, that it shall not be a pretext for a *convention*. No rational man will say, that for the fair and legitimate purpose of petitioning the Parliament, a convention of three estates, consisting of nearly six hundred persons, sitting in a public theatre, without limit or controul, can be necessary; the public peace forbids such an association, and the law emphatically has declared, that there shall be but one Parliament in the country. I repeat it, it is new and unconstitutional doctrine to talk of the unrestrained rights of the people. What is that most precious right of the people of these countries, which the Catholic Committee is about to usurp? The right of representation! That which distinguishes us from all the nations of the earth! Is it unrestrained, and, until the announcing of this Catholic Committee, was it ever uncontrouled? The rights and qualifications of electors are measured by property, situation and independence. The freeholders of the country alone can exercise them; and some classes are excluded, on account of their supposed depend-

ence. The title to be an elector must be ascertained by registry, and identified by record. The capacity to be elected is confined within necessary restrictions; the law of election is complicated, and nice, and a particular tribunal is constituted to administer it. The King's writ issues to the public officer, and, under the heaviest responsibilities, he obeys and executes it. When the senate is convened, the members are under the controul of their speaker. Their very privilege of speech is definite, and their duration depends upon the King, who can prorogue or dissolve them. Such is the utmost right of representation, which the freest constitution upon earth allows to the people; and, if the popular part of that constitution were not thus restrained, it would degenerate into wild democracy and fatal anarchy. Compare this right of representation with that claimed by the Catholic Committee, and, in the contrast, behold the wisdom of the Convention Act, and the necessity of these prosecutions. See what is the constitution of those self-created Parliaments, which that statute denounces as illegal, and which this prosecution is instituted to put down. What is their law of election? what is their qualification of freeholders? what is their description of candidates? I assert not too much, when I assert, if the legitimate Parliament of the realm were to be assembled, as this Committee has been, that the constitution would not survive the first election. What

is their claim to this monstrous assumption of power? It grows actually out of their numbers, and the Catholics assert it, because they are four or five millions of people. What then are ~~for~~ ~~of~~ five millions to elect? Whose writ summonses them?—what officer in each county is to hold the election?—who is to decide upon the votes?—who is to identify the successful candidate? Every man of the four millions is qualified to be an elector or a representative; and in the county of Meath, my Lord Fingall, in the exercise of either character, might be jostled by a beggar or a rebel, claiming a superior qualification. Can it be the Constitution, or the Law, that what is denied to the Parliament, shall be allowed to a Committee,—and that all the evils of democracy shall be let loose upon the land; universal suffrage, promiscuous eligibility, and indiscriminate representation? But suppose this extraordinary meeting to assemble, who is to control them if they run riot? Who is their Speaker? Who is their Serjeant at Arms? Who will have the authority—if any one has the courage—to check licentious and disaffected declamation? Who is the man, of any rank, that would have spirit or power to interrupt or rebuke a factious orator? which of the loyal men in that assembly would venture to chide an inflammatory harangue, offensive to his feelings and odious to his principles?—If, in such an assembly, a rash young man, inflamed by debate, should loudly assert, that the

glorious *Yeomanry of Ireland* were the exterminators of their countrymen, and should eulogize and hold up to veneration and respect, the rebels of 1798, as patriots and martyrs,—who is there to call him to order? What man, in a popular and self-constituted assembly, would venture to interrupt him? The very nature and constitution of the assembly generates danger and encourages excess. Compare such a constitution with the established authorities of the land, all controuled, confined to their respective spheres, balancing and gravitating to each other;—all symmetry—all order—all harmony. Behold, on the other hand, this prodigy in the political hemisphere, with eccentric course and portentous glare, bound by no attraction—disclaiming any orbit, disturbing the system, and affrighting the world!

MY LORDS,

And Gentlemen of the Jury—

IT is now my duty as counsel for the crown, to observe upon that evidence for the prosecution, which has not been contradicted, and upon that defence for the traverser which has not been supported.—The learned and able advocate for Mr. Kirwan, has left to me, as he always does to those who follow him, much to do, but he must forgive me if I say that I feel my duty upon the present occasion to be more troublesome than formidable, and that its difficulty consists rather in the variety and inconsistency of the defence which I have to encounter, than in the weight or value of the arguments which he has urged; I find it difficult even to class the topics

it is altogether unnecessary to interpret; I repeat it, I am at a loss how to meet this many faced defence, which defies pursuit and eludes contact.

Quo teneam, vultus mutantem Protea
nodo?

I wish not to abridge the fair discharge of an advocates duty, which I know calls upon him to resort to every available topic in his clients case, and to omit nothing however inconsistent, by which he may serve him. But Mr. Burrowes would scorn upon this occasion the claim of such a privilege; he has assumed a loftier tone, and certainly no man is more qualified by virtues and by talents to sustain it. He is not forsooth the counsel of any petty client, or brought here to accomplish the impunity of any individual, he claims higher behests than those; he is the advocate of a peoples rights, coming boldly forward to meet a great question, he is the champion of a nations cause! the liberty of his country is his client. He must forgive me if I examine those high claims, and if I recall those circumstances of the present trial, upon the recollection of which, I expect that he will abandon those borrowed

plumes, and lower those towering pretensions. I repeat it, no man that I ever knew is more calculated for the most dignified discharge of the grandest duties; but upon this occasion, he will recollect that though he came down with all his force, though his advance in column was magnificent and imposing, he has not disdained much of that skirmishing and petty warfare which rather bespeaks the partisan than suits with his higher character. Has he yet forgiven his client for putting him forward in the challenge of the array, that desperate experiment to represent to an irritated people, the government of the country as corrupting the administration of justice. Does he forget that he was for a moment imposed upon to believe, and employed to make the triers and the court believe that preposterous paradox, which common sense repudiates, and which nothing but metaphysics could sustain, that because Sir Charles Saxton had obtained a copy of the pannel after it was formed, he therefore of necessity was a party in the formation of it.—Does he forget the issue of that unjustifiable charge, and the solemn verdict of the triers upon it, when it appeared that no other advantage was obtained by the crown except an opportunity to prepare challenges to the jurors, by seeing

a copy of the pannel after it was formed ; that upon further enquiry it appeared that there was in this, no superiority over the traverser, for that his own attorney had the very same advantage, and that the crown might with equal justice and truth have challenged the array for having been framed by Mr. Kildhall, as Mr. Kirwan's counsel had challenged it, for having been framed by the crown solicitor. Does Mr. Burrows forget or forgive the further aggression of his client, who after making him the dupe of this attempted imposition, put him forward on the following day to state a rash, audacious and intemperate affidavit, in which that unfortunate man had the presumption upon his oath to real-ledge that slanderous charge upon the subject of the panel, which upon the former evening had been refuted and condemned by the solemn verdict of the triers, and the reprobation of the court ; and in which, a new slander was introduced aspersing the integrity, and defaming the character of the honorable foreman of that jury, and the other gentlemen impanelled with him ; a slander consisting of a variety of charges, all of which Mr. Kirwan swore he had reason to believe, and expected to be able to prove, and all of which, upon investigation turned out to be utterly unfounded and insup-

portable:—I mean not to assert, and I am most unwilling to believe, that Mr. Kirwan fabricated those base charges, or wished to impose them upon the court, knowing them to be false; on the contrary, I have no doubt that he was persuaded of their truth. It is the pitiable condition of faction to be credulous, there is something about it which distorts the judgment and perverts the mind; no man under its influence sees fairly or thinks directly; it is even less distinguished by its passion for misrepresentation, than by the voracious credulity with which it swallows every thing which is false. How otherwise can I account for it, that a man in the rank of a gentleman should desperately hazard the false and shameful assertions which fill that affidavit, which the court has declared ought not to pollute its files?

Another instance of the smaller game which Mr. Burrowes has not thought it beneath him to play upon this occasion, is the insidious offer of a special verdict, and the clamorous appeal to the counsel for the crown to put the law of the convention Act into a shape for decision by the dernier resort. My lords, this appeal could neither be intended for you, nor for the jury; it is calculated for the public, and in the face of the public will I expose it.

What is the meaning of calling for a special verdict, but to imply a doubt upon the law? What is the reason upon the former trial, before the law was announced by the unanimous court, while it was supposed to be in doubt, and while the opinion of one counsel conflicted with the opinion of another, that no such proposition was made? Why did not Mr. Burrowes then come forward, and why has he deferred this demand until the Court of King's Bench had pronounced a deliberate opinion upon a solemn argument? Does he expect that the King's Attorney General and myself will compromise our offices and betray the constitution of our country, by implying in a consent for a special verdict that the Court of King's Bench is not an authority upon the criminal law;—that we will sanction the presumptuous slanders of a factious press, which daily arraign the competence and question the authority of the first legal tribunal in the land: he is much mistaken if he thinks so: I ask him again, why did he not offer this upon the trial of Dr. Sheridan? I will not suppose a reason unworthy of him, and of the former Jury—I will not suppose that he declined to make such a proposal from a confident expectation of a general verdict from that particular panel—I will

not be seduced, even by his example, into the insinuation of any thing unworthy against honorable men. I believe those gentlemen to have been as honorable and as worthy men as those whom I now address. I believe their verdict to have been found upon pure and conscientious motives—I respect them for not having presumed to wrest the law from the court, and for having assigned the insufficiency of the evidence as the cause of their verdict—whether they were right in such an opinion or not, it is not for me to determine ;—I cannot but respect those gentlemen, and I am sure that you respect them too, but their verdict, gentlemen of the Jury, though it may influence, must not govern you—you are sworn upon your oaths, not upon theirs—you are to consult your judgments, not theirs—you are to lie down on your own pillows, and you are to answer to your God not upon their consciences but your own. I am satisfied that they are all honorable men ; I know many of them to be so. I wish that Mr. Burrowes had done equal justice and shewn equal candor to the Jury whom I now address—I wish that he had not, by an unworthy sarcasm revived the refuted slanders of the challenge to the array and of Mr. Kirwan's affidavit—I wish that he had not told you, that he would not give you the trouble of deciding upon the facts, but

would treat you to a point of law, with which he would not compliment your predecessors.—I own that it gave my heart a pang to hear an honorable and generous man go back to a confuted defamation, and rally the discomfited, and disgraced assault which had been made upon the fairness of the Sheriff's panel, and the characters of the individual Jurors:—if I thought that this had moved from his own heart, I should wish to expunge from my recollection something so unworthy of that pure source, but I attribute it not to him, but to his client; to those instructions, which in a desperate and factious case, call upon him to struggle for a verdict, however to be obtained; and I remind him triumphantly of all those facts, that he may learn from them the true nature of the service in which he is now engaged, that he may undeceive himself as to the magnanimous character with which he conceives himself to be invested, that he may recall the other circumstances of the trial to his recollection, that he may remember the points of variance and special pleading, upon which the geography of St. Mary's Parish was called in aid of the liberties of Ireland; that he may admit that if his defence has been as it certainly has been brilliant and splendid, its course has been attended by some satellites, which like other satellites, have not a little

eclipsed its lustre, and that if his client be a nation, and if his cause be a people's rights, he has defended them in no other manner than he would have defended a thief at the Old Baily.

In this manifold defence, the first topic to which I shall advert is Mr. Burrowes's repetition of his former argument upon the law of the Convention Act.—Much as I admire the talent and ingenuity which he has displayed, I must be permitted to say, that he has not upon the present occasion, argued with more force than upon the former, and unless he has argued with more effect, I shall not conceive myself called upon, or indeed authorized to discuss a second time as a matter of law argument, that upon which the Court has already solemnly decided : and therefore, unless I shall hear from your lordships, that doubts have been excited by Mr. Burrowes, as to the propriety of your former determination, I shall certainly abstain from any further reasoning, which might seem to imply my doubts of the soundness of your decision, and shall not compromise the deference which I think every professional man owes to the judgment of a Court of Justice, by bringing its authority into question——

[Judge DAY.—I remain unshaken in my former opinion, and I am the more persuaded of

that being the right construction of the Act, from the observations which I have since heard in opposition to it.]

Solicitor General continued.—The Attorney General and myself were most happy to find that your Lordships had permitted Mr. Burrowes a second time to discuss this question, and not only did not object to such a proceeding, but rejoiced that a further opportunity should be offered, of weighing the value of those arguments, which he might wish to advance:—but now that your Lordships have again declared your deliberate and solemn opinion, I shall not think myself at liberty to do more, than to announce it as the fixed and settled law of the land.—I trust, that such an adjudication will open the eyes even of those, who are determined to be blind upon this subject.—I trust, that no one will now hold the alarming language or promulge the formidable doctrine that the criminal law is unsettled, because *only* the Court of King's Bench has pronounced upon it, and that the subjects of this realm are at liberty to go on in experimental and intermediate violation of that law, until, mayhap the House of Lords may be called upon to decide upon it.—Upon a former occasion, I stated my opinion upon this statute, with reserve and diffi-

dence, although I was supported in it by the profoundest lawyer, and one of the wisest men who lives. I could not be over confident even in his opinion, when I knew that learned and able men had differed from us, but now I am warranted to assume another tone—I am not now to argue in support of my own fallible construction, but to announce and insist upon the highest authority, which I recognize in this land as long as the constituted and lawful authorities of this land are suffered to exist: so long the criminal law of the country is attested in the most unequivocal manner, when pronounced by the Court of King's Bench; and so long as that adjudication stands unreversed, it is emphatically the law, and let him that hears it so announced, disobey it at his peril. Let no man entertain the visionary and frantic notion, that this law, so pronounced, lies in abeyance, because perhaps upon some future occasion it may be brought under the consideration of the dernier resort, that in the mean time the King's subjects are absolved from the obligation of obeying it; and that the opinion of counsel is to supersede the authority of the Judges, and what the King cannot do, dispense with the law of the country: the proposition for which we contended, and which I understand your Lordships to have now established, I shall broadly and frankly

state.—That all assemblies of Representatives or Delegates returned by election, which assume to represent the People, or any portion of the People, are unlawful Assemblies, although the sole purpose of such Representation or Delegation be to petition Parliament, if the object of such Assembly be by such Petition or otherwise, to procure an alteration of matters established by law in church or state—that such Assemblies may be dispersed by the magistracy, and that all who concur in the election of members to such Assemblies, are guilty of a misdemeanor. Although I feel myself precluded from any argument in support of your Lordships declared opinion, I trust that I may stand excused, if I shall make one observation, suggested by Mr. Burrowes's mode of treating the subject yesterday ;—the principal difference between his late and his former speech, is that originally he struggled for the restrained construction of the word *pretence*, and insisted that it must be construed as false pretence; and yesterday he urged that topic less strenuously, but contended for a distinction, which in his former argument he had put less forcibly, between general Representation and Delegation for a particular purpose, admitting that general Representation is criminal, but alledging that Delegation for a particular purpose is not so: let me suggest

to his accurate and candid mind, that this is nothing but a shoot and offspring from his parent sophism upon the meaning of the word *pretence* and must abide its fate. If pretence means as we contend, purpose whether real or feigned, then the statute must be read as if the word were purpose, and then the enactment must be the very thing which he controverts, namely, that a Delegation for the purpose of Petitioning for an alteration of matters established by law is an illegal Assembly : and this necessary conclusion will not be at all affected by his remaining argument, grounded upon the proviso in the statute, because if the object of the Act be such as I have stated, then the proviso can never be construed to destroy the whole enactment, and to render the statute nugatory, by repealing every thing contained in it. The construction of the statute and the proviso must therefore be thus reconciled. The latter must be considered as declaring the general right of petitioning to be unimpaired, and the former to restrain the exercise of that right through the medium of Delegation.

From some passages in Mr. Burrowes's speech, I should be induced to suppose, that he did not so much dispute your Lordships judgment as he disclaims your jurisdiction, and that he

considers your Lordships to have arrogated the province of the Jury, in the interpretation of this statute :—I did not expect that I should have heard it gravely asserted by his lips, that the Jury were the proper tribunal for the interpretation of the statute law :—I shall never until corrected by the highest authority, cease to consider, and to call this the most monstrous proposition that ever shocked a legal mind. I know that for disputing this alarming and popular novelty, I have incurred much obloquy from what Mr. Burrowes calls the censorial power of the People, and have been represented as the advocate of arbitrary doctrine, but that shall never intimidate me into a concession of the first principles of my profession, and an abandonment of the elementary maxims of the constitution.—I never, until I shall be taught my error by some higher authority than the Newspapers, will hear with patience, or treat without reprehension, the assertion, that according to the British jurisprudence, Acts of Parliament are to be interpreted by juries.—If Mr. Burrowes asserts that proposition and is right, I am grievously ignorant; but I grapple with him upon the question, and am not afraid of the result : where does he find this position stated ?—in what legal authority has he discovered it ?—he may find the rules for the construction of statutes elaborately dis-

cussed, and minutely distinguished in our most authentic books, and that nice and difficult part of our science reduced to precision, and he has learned where your Lordships have learned how to apply those rules. But gentlemen of the Jury, when and where have you studied them?—what has been your preparation for the judicial office?—are you apprized of all the distinctions between statutes penal and remedial, and of the different views which may be taken of each?—is it not, my Lords, to be lamented, that at this time of day, we are without any recorded adjudication by Juries upon the statute law?—is it not to be lamented, that if it be their province to decide the law, yet that the law has been so perverse as not to provide for its own uniformity, and that the adjudication of one Jury upon a statute is not to be an authority to govern another, but that there may in fact be as many laws as there are Juries: Mr. Burrowes has much perverted the libel Act, which he has thought it necessary to read to the Jury, in order to persuade them that they must interpret the Convention Act: does that Act provide that Juries are to decide questions of law? certainly not. Had that been the case, the Legislature would at once have so enacted.—Before that statute, the Judges had claimed as questions of law, the decision upon

two matters which are in their nature, more properly questions of fact.—They had insisted, that in libel cases, the Jury should merely decide upon the fact of publishing, but that the motive of the publisher was immaterial, and that the tendency of the libel to produce the effects, or convey the meaning imputed to it was matter of law, and only to be interpreted by the Bench. In this the legislature has corrected them; and Juries now, in cases of libel, are to judge of the motive and the tendency, as well as of the publication of the libel.—But does it follow, that because the statute which is a declaratory one, has declared, that such was always the fair province of the Jury, and that these were in reality questions of fact, that Juries are in all cases to pronounce upon all law, and to interpret all statutes—that because each Jury is to pronounce upon the tendency of each ephemeral and fugacious libel; that therefore every successive Jury is to form part of a moveable and shifting tribunal, to construe in infinite varieties, the fixed and immovable laws of the land.—Surely such an illogical conclusion was never before offered to the human understanding. I was not less surprized, to find Mr. Burrowes claiming this privilege for you, gentlemen of the Jury, upon your right to find a general verdict in a criminal case, and arguing seriously, that because a jury finds a

general verdict it decides the law. I did not think, that it could be necessary to suggest to his very discriminating mind, the most obvious and common place distinctions.—Does he not know, that when the jury find a general verdict, they apply the law which they hear from the Bench, to the facts which they decide upon their oaths, and do not decide the law.—Let me remind him of the too common case of murder—a man is indicted for that crime, and his guilt or innocence depends upon those shadowy distinctions which distinguish it from manslaughter: the judge tells the jury the legal distinctions between the several classes of homicide, and tells them (we will suppose one familiar case,) that if they believe that the killing was sudden before the blood heated by adequate provocation, had time to cool, they ought to find a verdict of manslaughter, if otherwise of murder.—They find a verdict of one or the other.—Does any legal, or indeed any rational man suppose, that by doing so, they pronounce or decide the law of manslaughter and murder? certainly not.—If they did, that law would fluctuate with every homicide, and change with every jury:—they merely decide by their verdict, the facts upon the hypothesis of which the one way or the other the law depends, and apply the law to those facts.—If I shall be told that they may misapply

that law, and believing the facts which constitute the crime, acquit, or disbelieving them convict; I answer that if they do so, they violate the law and do not decide it, that they exercise the power which unfortunately all men possess, of doing what is wrong; but do not establish a right to do so. I am ashamed that it should be necessary to argue such a set of first principles in a court of justice. The mere censure to which I have been exposed for my opinions, and the charge of introducing arbitrary doctrines, of which, I should blush to be guilty, would not be a sufficient apology for my seriously treating such a question:—it is the sanction which the high authority of Mr. Barrowes's name, must give to the popular delusion which must be my justification. I request that this argument of his, may be compared with the pompous offer of a special verdict, so clamorously reiterated in this trial, and let me exhibit him as answering himself:—what is the result of a special verdict? the determination of the judges upon the law! If they are wrong the opinion of the court of error, which, in this country, consists of the twelve judges is resorted to. If they err, the correction of their opinion by the court of final judicature follows. What is the meaning of all this decision, and re-decision by judges upon judges, if his latter argument be well found-

ed, that juries alone are to decide upon the law? Suppose a special verdict found according to his last argument; we all know that a jury can find nothing by a general verdict, which they may not detail in a special one. Now, by his argument, their general verdict may pronounce upon the law, and interpret the Statute, and then the special verdict for which he has clamored, would exhibit a legal monster; a finding upon the law. But go a step further and see what his special verdict would be, if you combine his argument with the cross-examinations of his colleagues. They strenuously dispute all the facts of the case, and then his special verdict would negative the facts and assert the law. Compare again gentlemen of the jury, his call for a special verdict, and his argument for your judicial authority, with his challenge to the array, and his clients affidavit against you individually; and the result will be that Mr. Kirwan objects to you, as unworthy to try any fact, and Mr. Burrowes insists that you are infallible in the interpretation of the law.

I must now gentlemen of the jury, request your attention to those facts, and that evidence upon which Mr. Burrowes has scarcely condescended to remark, but which his colleagues have laboriously struggled to impeach.

Before I allude to the testimony of any one of the witnesses, let me repeat an observation common to them all, which I urged upon a former occasion;—three persons have solemnly deposed in a court of justice, to the facts which constitute the crime, of which Mr. Kirwan stands accused:—no imaginable motive can be assigned for their committing wilful and deliberate perjury—no witness has been produced to impeach the moral character of any one of them, or to represent him as unworthy of credit.—The facts to which they have deposed, have been impliedly admitted to be true, by almost every word of Mr. Burrowes's speech, which has been a justification of his client, and not a denial of the conduct imputed to him. Those facts are from their nature capable of contradiction by hundreds of persons, and not one person has been produced to contradict any one statement made by the witnesses for the crown: I borrow then, the strong expression of the Attorney General, and I ask you, whether it is not an insult to the understandings of a jury, to call upon you upon your oaths to convict three men of deliberate perjury, who swear to what the leading counsel for Mr. Kirwan is instructed not to deny, but to boast of, because his other counsel have been desired to treat as libellous, every thing which he has gloried in

as meritorious. Apply this reasoning to the evidence of Mr. Huddleston—that gentleman has a second time been treated with great asperity, his private history, his misfortunes, nay, his religious opinions have been all scrutinized in a severe cross-examination; he has been called upon to account in a court of justice for his having abjured the roman catholic faith, and nothing calculated to excite disgust and prejudice against him, in these irritable times has been omitted. I am sure if it had been necessary to investigate the nature of his religious belief, and discuss the comparative merits of his former and his present tenets, he could not have fallen into the hands of a more profound and accomplished divine than my learned friend Mr. Goold, and that the public could not fail to be highly edified by his lectures in divinity. But much as I respect his high erudition, and his intimate acquaintance with the fathers, with Thomas Aquinas, and Thomas a Kempis, and the whole Corpus juris canonici, he must excuse me if I presume to doubt the relevancy of so much learning so uselessly displayed; and if I ask him of what avail it is to his client, to shew that Mr. Huddleston is not so good an ecclesiastic as himself. If he supposes that by such a cross-examination he discredits Mr. Huddleston, let me remind him of what Mr. Hud-

Huddleston has sworn, and let me ask him is he instructed, seriously to persuade you gentlemen of the jury, that what he has sworn is a fabricated tale, a mere invention by the government, suggested by subornation, supported by perjury. Mr. Huddleston has sworn to nothing whatsoever, but that on the 9th of July, 1811, lord Fingall presided at an aggregate meeting (numerously attended) in this city, in Fishamble-street theatre, at which certain resolutions were passed, which have been since published in the newspapers, with lord Fingall's title of honor subscribed to them. Mr. Huddleston has stated the names of several gentlemen now in this court, who attended and acted in that meeting. If it be not true that such a meeting ever took place, or if Mr. Huddleston has misrepresented what occurred at it, why have none of those gentlemen been produced to contradict him, and why are you left to the hazard of inferring his discredit from a cross-examination as to his religion; why has not lord Fingall himself been produced?—I have the honor to see that noble person now before me, and he must excuse me if I observe upon the extraordinary and afflicting situation, in which the defence of this prosecution has placed him—I shall say nothing inconsistent with that high respect for his cha-

racter, which I unfeignedly feel, and which I shall not be restrained from expressing by the only thing which could restrain me, his presence: I know his private worth, and his public spirit; I have not the slightest doubt of his meaning well, and being actuated by pure and honorable motives in all that he has done, though he must allow me to say that I consider him as an instrument in the hands of others, as grievously mistaken, and as acting under a gross delusion; but he must permit me to express what I feel for his situation, and for the trial to which his noble heart has been exposed; when I see him now a second time condemned to sit by in a court of justice, and listen to advocates hired to deny within those walls, that conduct and those acts which he has been taught out of this court to glory in as patriotic and meritorious: which he has sanctioned by his presence and authority, and to the public avowal of which, his title of honor stands pledged in every newspaper in the empire. Gentlemen of the jury, I say as long as lord Fingall sits silent in this court, it is an idle waste of time to cross-examine Mr. Huddleston—it is useless, if it were possible, to represent him as infidel or infamous. My lord Fingall, sits there his compurgator; his silence sets him up and supports his testimony even if it were other-

wise exceptionable, and upon that testimony I shall not affront your feelings and your intellects, by making another observation: but let me turn again to my learned friend Mr. Burrowes, and ask him in this part of his case, how he has supported his claims to a national defence, and to a public cause; let me remind him, that it is now seven or eight months since the government of the country has been at issue with his client upon the one single question; whether a committee to be convened under lord Fingall's proclamation, (for such I must call it,) of the resolutions, of the 9th of July, be lawful or not; and that up to this hour no man in any place has been candid or fair enough to admit those resolutions. I know what evasive circumlocutions may be contrived as substitutes for this simple admission, I can suppose the noble lord to be taught to say in answer to any question, "that he is engaged in a lawful and constitutional pursuit;" but I know that up to this hour, that meeting and those resolutions have never been admitted, and that the allegation of their existence, has only been encountered by a cross-examination into Mr. Huddleston's religious opinions. I call therefore again upon Mr. Burrowes, to weigh well his pretensions to the manly and dignified

advocacy of a great national question. I call upon him to lower his tone—I say to him—Descend from your iambics.

Proijce ampullas & sesquipedalia verba.

I come next to the evidence of John Sheppard, and shall in the first place, observe, that the gentleman who cross-examined him, must have considered his testimony as highly injurious to his client, if believed, or he never would have taken so much pains to discredit it; Upon the minute details of it, it is quite unnecessary that I should decsant; I defend it in the abstract by this general observation, that he has stated the occurrences of the 31st of July, in Liffey-street Chapel, to have occurred in the presence of great multitudes, and has named several persons, all present during this trial, as having acted in the election of that day, not one of whom has been produced to contradict him.—One of those gentlemen sat in the gallery while he gave his testimony:—I mean Dr. Sheridan, the person alledged to have been most active in the proceedings, and a person whose production could not have subjected him to any risque, for he is now an acquitted Delegate: he is a gentleman of profession and character; and if Sheppard either swore falsely or inaccu-

rately, could easily have contradicted him :— a different line of impeachment however, was adopted with this witness, and as no one else would contradict him, an experiment was made to make him contradict himself: whether that experiment was successful or not, I frankly own that I am unable to assert : I should rather suppose that it has failed, because Mr. Burrowes in his address to you, made no observations upon his evidence, nor did he pretend that he had contradicted himself.—Let it not, however, be supposed that I pledge myself for his not having done so :—you gentlemen, must judge for yourselves, as to the effects of his cross-examination, and if you are able to form any opinion upon it, your heads and mine must be made of very different materials.—My learned friend, Mr. Burne, must not suppose me to insinuate, that his discharge of that duty was unnecessary or prolix ; he must permit me, however, to say, that it was somewhat prolonged.—No one discharges his professional duty with more ability and effect than he does ; but he will remember, (I am sure, I shall never forget it,) that he cross-examined John Sheppard for three hours and a half, by Shrewsbury clock :—there are limits to the human faculties, and I must confess, that at last mine were so exhausted by this process, that I was unable to carry away a definite idea, or

even a distinct sentence :—the victim on the table at last swam before my eyes, and some confused buzzing sounds like the repetition of a catch word in the examination ; *notes, drafts, copies, informations, etcetera ; etcetera*, rung discordantly in my dizzy head, and tingled in my ears.—Gentlemen, if such were the effects produced upon a mere suffering auditor, what must have been the sensations of the witness himself, and let me ask you, if the man had fallen into contradictions and inconsistencies, who could have been surprised at it ? who has sufficient confidence in his own memory or nerves, in his own strength of body or of mind, to suppose that he could come out from such an ordeal more than alive—let me put it to the candor of my learned and ingenious friend, Mr. Burne, how does he suppose that he would have endured such a *peine forte & dure* himself ? let him imagine himself nailed to that chair, and that chair fastened to that table, and another Mr. Burne, if another could be procured, sitting down in regular assault before him, and for three hours and a half battering and beleaguering him like a besieged town ? let me ask him how he thinks he would feel about the time that his adversary became tired of the attack : really gentlemen, nothing is so unfair as to judge rashly of a man's credit who has been exposed to such a trial. I

will not say that the witness did not sink in the contest, though I cannot say that he did; but of this I am sure, that if after so many rounds, he had given in, the mere length of the combat would account for the victory. We know that many a woman has had to complain of violation, who neither yielded to her passions, or was overpowered by force, but who has been worn out by the fatigue of resistance, and subdued by perseverance, whose lover has succeeded neither by his beauty or by his prowess, but because he was indefatigable. Such a swain is irresistible. But gentlemen of the jury, jests apart, what is the fair influence of such a proceeding upon your minds, and how are men acting upon their oaths, to treat such an affront to their understandings? You have heard also, the third witness, M'Donough, cross examined by Mr. Burton without stint and with the same effect. Mr. Burrowes has not in his speech insinuated that he was entrapped into a single contradiction; but if he had, what a faint and fallacious gleam would such a contradiction have offered to mislead you, and would you allow yourselves to be directed by it at the desire of those who had an opportunity of pouring in full and unequivocal daylight upon every thing doubtful, and who have refused to do so. When therefore they loudly demand your verdict

in contradiction to the witnesses whom we have produced, let me silence the call, by pointing out to them now in this Court, lord Fingall and Mr. Hay, and Dr. Burke, and Dr. Sheridan, and all those many persons, who could have contradicted every particle of the crown's case, and whom they have not dared to bring forward: It was in the consciousness of this weakness, that Mr. Burrowes has called upon you for a finding, not to be built upon your disbelief of the evidence, but upon your opinion of the political influence of your verdict.—He has called upon you for a *healing* verdict, and has told you that the last verdict was *most healing*. Gentlemen, I shall never hear without reprobation such a call upon a jury: I trust that no such dreadful precedent may be established, as the finding of popular and political verdicts. If the public mind requires to be healed, I trust that the consciences of jurors may never be bruised into a nostrum for the purpose; that jurors may never turn state empirics, and fancy that they are prescribing for the distempered commonwealth; that they are politicians and not jurors, and that they are at liberty to perjure themselves for the good of their country. No verdict can be righteous which is not founded upon the evidence, and the public weal can never be advanced by frustrating the administra-

tion of justice. In the name of God, if you disbelieve the evidence which you have heard, nay if you reasonably doubt it, acquit Mr. Kirwan—if you do not, fabricate not doubts for yourselves, which no fair mind, or sound head can sanction, merely to achieve what you may think a public good. Take the law from the court, and for the fact, consult your understandings and your consciences, but compromise not your oaths, and trifle not with your solemn duty.

Gentlemen, the law and the fact of this case were not sufficient for those advocates of public liberty who defend Mr. Kirwan: they considered their defence incomplete, unless they attempted to non-suit the crown, if I may so, and they have accordingly relied upon two points of variance between the indictment and the evidence upon which it becomes my duty to address their lordships. Those points were suggested yesterday by Mr. Perrin's ingenuity, and if for a moment they appeared embarrassing to the court and deserving of a serious answer, every one who heard him, must attribute it to the able, and eloquent, and lawyer-like argument, by which he supported what I think upon enquiry it will be found, even he has failed to establish:—the first point is, that the in-

dictment states the resolutions of the 9th of July, in a manner differing from the testimony of Mr. Huddleston applied to that allegation. The indictment states that, a resolution was carried upon that occasion, that a committee of roman catholics should be appointed, to cause petitions to be presented to parliament for the repeal of the Penal Laws, and *to procure signatures thereto in all parts of Ireland*; and that such committee should consist of the catholic peers, and their eldest sons, of the catholic prelates and baronets, and of ten delegates from every county, and five from every parish in Dublin. Mr. Huddleston's evidence supports this indictment in all particulars, except in that part of the resolution which relates to the *procuring signatures to the petition in all parts of Ireland*—upon that he has been silent, and it is alledged that this is a fatal variance between the indictment and the evidence. In the first place my lords, the transactions and resolutions of the 9th of July, form no part of the offence imputed to Mr. Kirwan by this indictment. He is charged with having acted in an election on the 31st of July, and the resolutions of the 9th of July, are merely stated as introductory matter to that charge, in order to show that the election in which he acted, was an election for delegates, to sit in such a commit-

tee as is described in the former resolutions, that is, a committee to procure by means of petitions, a repeal of the penal laws. That election is the crime prohibited by the act, and charged by the indictment, and if every thing necessary to constitute that offence, if the *corpus delicti* be all well charged in the pleading, and supported by the evidence, it is impossible to say, that there has been any variance, merely because something not necessary to the constitution of the offence has been stated as inducement in the indictment, and not supported by the evidence. For instance, if the indictment had alledged in the introductory part of it, that one of the resolutions was, that the committee should make preparations for a certain festival to be afterwards given, and that the witness had not proved it, no one would argue that there was a variance: because the preparing of such a festival is not essential to the offence prohibited by the statute, and charged by the indictment.—In the same manner procuring signatures to the petition, which is the passage omitted by Mr. Huddleston, is no part of the offence charged, nor at all necessary to it, and as every thing substantially necessary to it has been proved as laid, it cannot be held that there is a variance. In indictments for murder, the offence must be proved substantially and not minutely, and an

indictment alledging that A. gave the mortal wound, and that B. and C. were aiding and abetting, is supported by proving that C. gave the wound, and that A. and B. were aiding and abetting.—These indictments often state one kind of weapon and its value, and the evidence is frequently of a different weapon, without any proof of value, and yet such indictments are well supported. The true test is—whether the *substance* of the offence as charged has been proved ;—the second variance insisted upon, is, that the indictment charges that the election at which Mr. Kirwan assisted, was for a district in the city of Dublin, called St. Mary's Parish, and that it appears upon the evidence, that part of that Parish is in the county of Dublin, inasmuch as the Catholic Parish of St. Mary's comprehends three Protestant Parishes, one of which, (St. George's,) is partly in the county of Dublin. This objection was argued as if the indictment had alledged, that the Parish of St. Mary was in the city of Dublin, and if that had been the case, the evidence would certainly have appeared inconsistent with it. But your Lordships will observe, that there is no such allegation in the indictment, which merely alledges that the district for which the election was held, ~~was~~ in the city of Dublin, and that such district is commonly called St. Mary's Pa-

rish. Now it is perfectly consistent, that the district for which the election was held, should be all in the city of Dublin, and should be called St. Mary's Parish, and yet that St. Mary's Parish should not only comprehend all that district, but also extend to part of another in the county of Dublin, and it would not follow that such district was the less in the city or the less to be called St. Mary's Parish, because St. Mary's Parish extended beyond that district. There is a street in this town, one side of which is in the city, and the other is in the county of Dublin. If I should say that a certain man lived in the city of Dublin, in a place called Great Britain-street, my assertion would not be false, because the other side of the street is in the county: his residence is not the less in the city, because his opposite neighbour resides in the county; and because Great Britain-street is a name common to both their residences: in truth this is rather a question for the Jury upon the fact, than a variance between the proof and the pleading. If the Jury should conceive the witness to have sworn impliedly that the election was partly for the county of Dublin, then the indictment which alleges it to have been an election for a city district might be said to be falsified, but no such construction can be given to the evidence—

THE CHIEF JUSTICE.—[We shall take care that this point be reserved for the opinion of the Judges, in case of a verdict against the traverser, and for that purpose we must get from the Jury a decision upon the fact, whether the election in Liffey-street was confined to the representation of the inhabitants within the city, or embraced the whole extent of the parish, part of which is in the county.]

In that view of the case, see my lords, and you gentlemen of the jury, what are the facts:—the election in Liffey-street chapel on the 31st of July, takes place in consequence of the resolutions of lord Fingall's meeting on the 9th of the same month. That fact would not be disputed any where but in this court, and there has been abundant evidence of it. There is but an interval of twenty-two days between the two meetings. The election takes place in this city, is declared to be for a parish, and the exact number of delegates is returned, which lord Fingall's resolutions required to be returned for a parish in Dublin. The persons concurring in the election, speak of a proclamation which had that day issued from the Castle, and that proclamation is in proof, and refers to the resolutions of lord Fingall's aggregate meeting. Now in those resolutions the catholics are

called upon to return ten delegates for every county, and five for every parish in this city, and how can it be supposed that a parochial meeting in the city of Dublin, which elects five members and no more, could have had it in contemplation to return any of those members for the county, the inhabitants of which, if they acted in obedience to those resolutions, must have elected ten to represent themselves, Will Mr. Kirwan's counsel demonstrate that he has not violated the law of the land, by shewing that he has disobeyed the proclamation of lord Fingall, and that the election in Liffey-street was so stupidly managed, that contrary to the mandates of that proclamation, the county of Dublin were to have two sets of representatives conflicting with each other? But upon what is this alledged variance made to rest?—upon the cross-examination of Mr. Sheppard, saying, upon his belief and hearsay that he understands that part of St. Mary's catholic parish, comprehend the parish of St. George, No witness has been produced to prove the fact positively, and if there had, has any witness been produced to prove for what district the election was intended? I ask again as in another part of the case, why have not doctor Sheridan and doctor Burke been produced? they might have sworn that the election was partly

for the county; they might account for the disobedience of lord Fingall's resolutions, as intentional or accidental—they might have told you that they did not intend to pursue them, and did intend to elect city delegates for the county, although the county was to have elected members for itself; or they might have asserted that they blundered the election, and in point of fact, made a return different from that which was required from them, or that which they wished to make. But in the absence of any such testimony, are you gentlemen of the jury to presume in favor of Mr. Kirwan, that he and his friends were acting in direct contradiction to their own professed objects, and acquit him by implication of having transgressed the law, by convicting him of having frustrated his own most deliberate intentions?

Gentlemen of the jury, Mr. Burrowes has labored to awaken your jealousy, by calling the present prosecution an arbitrary attack upon the subject's right of petitioning, and he has represented the King's Government, as having declared war against the constitution of the country.—He is never more eloquent than when inspired by those ardent and virtuous feelings which animate his zeal for the constitutional and free principles, which I know to be dear to his heart; I must appeal however to his

cooler mind, and ask him if the law of the country prohibits petitioning by delegation; whether those that enforce that law can be justly held up to public odium, as having taken up arms against the constitution? and I would further ask any man of plain unsophisticated understanding, uncorrupted by refinement, whether he seriously believes that such an assembly as lord Fingall's resolutions of the 9th of July have announced to the public, be in reality a mere and a fair proceeding in the exercise of the right to petition. I would ask him, whether an assembly, consisting of between six and seven-hundred persons, (for I believe the Attorney General has much under-rated their numbers,) comprehending all the orders of the Roman Catholic people, partly self-appointed, partly returned, by all who may choose to return them, collected in a theatre, with open galleries, for the admission of mobs and note takers, sitting as long as they please, from day to day, and month to month, under no man's controul, subject to no discipline; debating publicly all descriptions of topics, and circulating those debates over the empire, by the means of a licentious press, be in reality an association, for the purpose of exercising the legitimate right of petitioning the Parliament.—I rely not at this moment, upon the uncontradicted testimony of the witnesses for the crown, that the members

returned to this committee were to manage the other affairs of the catholics, as well as conduct their petition to parliament; but I put it generally to every man's common sense, whether the very formation of the assembly, bears any resemblance to the mere exercise of the right of petition, whether any man can believe that such a society would stop there, and whether any established government could be justified in permitting such a committee to exist, if the laws of the land were sufficient to suppress it. Mr. Burrowes is obliged to admit, that whatever description of assembly the Convention Act prohibits, is in its origin unlawful, he has conceded that the Catholic committee might, by its conduct fall within the Convention Act; and thus has been compelled to argue, and he must allow me to say he has argued feebly, that it is upon its subsequent conduct, that its illegality must depend, and has exposed himself to all those inconsistencies, which, on a former occasion were pointed out, and which result from admitting that an assembly may be illegal in its inception, that the magistrate may immediately disperse it as such; that any man taking the smallest part in the formation of it, even advertising an election for it, is guilty of a misdemeanor, although the assembly should never

meet, and yet that its subsequent demeanor is alone to decide on its unlawfulness: I shall not repeat what I formerly said of the dangerous nature of such associations, and of the policy of that law, which being founded on their probable mischief, strikes at their original formation; but I ask who can answer for the duration of such an assembly as the Catholic committee? Mr. Burrowes has been instructed upon this occasion, to bespeak the favor of the Jury, by insinuating, that if government had not rudely interfered with their meeting, they would themselves have dissolved in a moment after voting their petition, and have died a suicide death in five minutes after assembling. Gentlemen, this was no bad topic in a defence which rejects nothing, but in hinting such a result to you, was Mr. Burrowes obeying his instructions, or speaking from his experience? Is such his recollection of the sittings of the Catholic committee? Was he aware that he would be called upon to reconcile such a suggestion with a very different description of the Catholic committee upon the former trial, when in one of the most eloquent passages of the most eloquent speech he not merely argued upon the necessity for such a committee perpetually existing, not merely asserted that the Catholics never had been without such a committee

for half a century, but described in glowing language the comprehensive duties of such a convention, assembled for the purpose of keeping up a perpetual appeal to public opinion, watching the course of public events, abating prejudices, obviating difficulties, hovering, if I may so, over the catholic interests with permanent superintendence, riding in the whirlwind, and taking their chance of directing the storm, If Mr. Burrowes be now instructed to talk of their five minutes existence, and their suicide dissolution, let me suppose for a moment that those who have instructed him so to speak, had shortly before they so instructed him, at what he calls a memorable festival, pledged themselves and him to a different sentiment. Let me suppose that they had announced by one of the solemnities of such a meeting, their prayer "that the catholic committee might be dissolved by catholic emancipation," and thus of necessity have implied their determination that the committee should permanently continue until parliament should have conceded to their wishes, and yielded the last trench in the contest. I would then desire him to reconcile his former and his present speech with each other, and with his client. I would ask him whether it was a justifiable charge which accused the government of a wish to obstruct the sub-

ject's right to petition, because they put in force the law against unlawful assemblies, and I would tell him, that those against whom he directs the charge, are as much attached to the free constitution of the country as he is himself, and that because I value and cherish the sacred right of petitioning, I trust not, merely, that it may never be invaded and never forfeited, but that it may never be abused.

I wish that he had spared another topic, and had not charged the government of the country with a determination to put down the catholic people. I should hope, and I believe that those words hastily escaped his lips, and that he had scarcely uttered them, till he wished to retract them. They suit not with his character, who is less distinguished by splendid talents than by the virtues of his heart, and who I am sure would not condescend to adopt the vulgar calumny which flings indiscriminate obloquy and imputes intolerance and bigotry to every man engaged, however conscientiously in the discharge of public duty. I shall not deny that the imputation coming from him wounds me, and that I had hoped that in twenty years in which I have not ceased to love and admire him, and in which I have labored to de-

serve his esteem, I had not earned the character of a bigot: I acquit him of intending such a charge—but those who are every day indulging in such an accusation, little know the men against whom they direct it; they little know the exalted and noble personage who presides in the government of this country, or the characters of those who have the honor to serve him, if they suppose them to be actuated by bigotry and intolerance, or of prejudice against our fellow subjects on account of their religious opinions. Intolerance!—every sound understanding condemns, and every honest heart abhors such a sentiment. There is no man who will not embrace the abstract principle of toleration—there is no man who will deny that religion is a question between man and his God. and that every man should be unmolested in the free exercise of his particular faith. What is so strongly expressed in the introductory resolutions of the 9th of July, to which lord Fin-gall's name appears, is a truism and first principle. As a first principle, no one will deny that civil disabilities ought not to affect a man for his speculative tenets—as a first principle, I would say that the privileges of every free country, ought, like the mercy of Heaven to be open to all persuasions, and that my political opinions would not less revolt against an

exclusive constitution, than my religious principles would be shocked by an exclusive salvation.—Those principles founded upon abstract justice, ought to be strained to the highest in their application to the affairs of mankind, but what is their application, and by whom is it to be made? With relation to the affairs of Ireland, the prevailing delusion of the country, consists in always treating the question of catholic emancipation, as a question of metaphysical first principle, and in representing the Penal Code as an original aggression committed by persecution and intolerance against the professors of the catholic faith—those who reason so, much mistake and much forget, The Penal Code grew out of political events, connected with the most calamitous periods of our history, and is the fruit of civil discord and distracted times—I wish not to recall the memory of those misfortunes—that they should have produced a necessity for such laws every one must lament—that such necessity should have ceased, and that the severest provisions of those laws should have been repealed every one must rejoice. But with respect to what remains, the wisest and the best men in the empire differ from each other, both as to the principle, the time, and the degree. Some of the warmest advocates of the measure consider it a serious ques-

tion of concession on the one hand, and security on the other, and would tremble rashly to apply an abstract principle to an established order of things, without providing against all the danger which even the best changes are calculated to produce in political concerns. What then is the fair result from the tendency of this grave and comprehensive and delicate question? Surely every man attached to the peace of his country, must answer,—leave it to parliament. Entrust it not to popular discussion and agitation, alarming in proportion to its importance, in self-created conventions. Let the Catholics approach the throne and the legislature with their petitions in the manner in which they well know that they may be conducted, but let them not suppose that those petitions are to be made a pretence for a distinct and Catholic parliament. The wisdom of the legislature must be supposed adequate to the difficulties of the empire, and to that wisdom let them be submitted:—I mean not to adopt a course, which I have reprehended in another, and discuss a political question in a court of justice: I am no political character, but I am anxious to repel the charge of bigotry, and to disabuse, if possible, that prejudice which would identify an opposition to the Catholic committee, with intolerance to the Catholic re-

ligion.—I trust that it is neither bigotry or intolerance to maintain the law and the public peace, and I am sure that no man, whether he is bound by official duty, or interested individually in the tranquillity of the country can answer it to himself, if he stands by and sees a self-created Convention defying the laws, and bearding the government. Let the Catholics, I repeat it, pursue their object legitimately; but let them not cut their way to the temple of the constitution through the wounded laws of the land:—That cannot be permitted.—I trust that parliament may throw the portals of that temple, open to them as my heart, as far as is consistent with the interests of the empire, the connection of the islands, and the safety and integrity of the constitution: I trust that the legislature in its comprehensive wisdom may so adjust and reconcile, and secure the interests of all, that a system may be established, which though not young, I hope that I may live to see; which will leave to the Catholic nothing to complain of, and to the Protestant nothing to fear. But is this desirable consummation to be achieved by the formidable and illegal assumption of the Catholic committee? I speak with alarm and reprobation of that committee as a body—I know at the same time, that

many of its members, several valuable men in my own profession, the noble lord who has attended during the greater part of this trial, and his friends and his connections engaged in it originally with fair objects and pure motives, not knowing that they were violating the laws of their country, and blind to the danger of such an association, and the mischiefs into which it precipitates the most innocent and well meaning: but while I do justice to their motives, I shall not shrink from speaking my mind of the body to which they belong, and shall assert my firm conviction, that the Catholic committee has been the deadliest foe of the Catholic cause, and has been calculated beyond all other measures, to disgust its friends, and give triumph to its enemies.—What I repeat, is the pretence for this frantic project of a convention? a proceeding only calculated for a disorganized government, and an extreme case? Are these the days of Runimede and the revolution? Has our King rebelled against his subjects like John, or abdicated them like James? Has any thing happened to put the people upon constituting a new representative?—Our empire is powerful, our constitution is free, our administration of justice is perfect, our parliament is enlightened, our Prince is magnanimous; we enjoy

every blessing that should inspire love for our country, and courage to defend it.

Gentlemen, I have disclaimed the right of calling upon you for a healing verdict, but allow me to say, that if you are satisfied of Mr. Kirwan's guilt, (and otherwise I wish not for his conviction,) I doubt not that your decision will be salutary to your country. Punishment is not the object of this prosecution, which is not vindictive but exemplary: I trust that its effects will be to bring back to their habitual respect for the laws of their country, the noble lord, and honorable and worthy men who have been misled upon the Convention Act, who have been induced to persevere in its violation by error, and who have unfortunately engaged themselves in the insatuated project of establishing the Catholic committee.—I trust that their eyes may be opened; that they may not be influenced by false shame to persevere in what is wrong, but feel that true pride and honor consist in acknowledging and retracting a fault. I trust that their example may be followed by others; that harmony may be restored amongst us, and that the consequence of this trial may be the establishment of the law, and the pacification of the country.

FINIS.

CHARGE

OF THE LORD CHIEF JUSTICE OF IRELAND, UPON
THE TRIAL OF MR. KIRWAN, ONE OF THE
CATHOLIC DELEGATES.

GENTLEMEN OF THE JURY.—The importance of the case, which is before you, makes it less to be regretted that so much time has been taken up; a great portion of it, however, has been occupied by discussions with which we have nothing to do, being merely political, much more fit for Parliament than for this Court, and with arguing objections, which do not press upon the Jury for their consideration; the facts and the matter really existing in the cause, for your consideration (attending to them, and not to irrelevant topics) are confined to a narrow compass.

Gentlemen, the Traverser stands indicted for an offence, which you are to try, whether he has committed or not. He is charged with having acted and voted, at an election for a representative of a particular kind—that is the direct fact charged upon him. It will be for you, under the circumstances which have been proved, to say, whether that fact has been proved, to your satisfaction, and if so, whether, as the law shall be stated to you, it be an offence.

Gentlemen, the Indictment against the Traverser states, that a meeting was held on the 9th of July last, in Fishamble-street—that the persons assembled, contriving and intending that an assembly should be therefore held, to represent a great class of his Majesty's subjects, the Roman Catholics of Ireland—that the mode, and manner, and description of the representation, which was to be constituted, were delineated by certain resolutions. Gentlemen, it will be enough for me to state, from the resolutions, the construction of the assembly to be thereafter held, which was to consist of the Catholic Peers, their eldest Sons, the Prelates of the Catholic Church in Ireland—the Catholic Baronets—ten persons to be appointed, or chosen by the Catholics in each county, the Survivors of the Delegates of 1793, to constitute an integral part of that number, and also of *five* persons from each parish in *Dublin*, and that assembly, thus constituted, is stated, in the indictment, to have been for the purpose of exercising an authority to represent the Roman Catholic inhabitants of Ireland, of procuring an alteration of matters, established by Law in Church and State, and under pretence of petitioning Parliament. Gentlemen, the defendant is then charged, not with any act done at this meeting, (for, at the first meeting of the 9th of July, it does not appear,

nor is it alleged, that he was present) but with acting in conformity with those resolutions, and he is charged, precisely with this, that, in order to assist in the formation of an assembly of the description, which I have stated, and to carry the resolution of the 9th of July into effect, an assembly was held on the 31st of July, twenty-two days after, at Liffey-street, in order to elect five persons, to represent a district in the City of Dublin; commonly called the parish of St. Mary; that, at that assembly, Doctor Sheridan, was appointed one of the persons, to act as representative of the Roman Catholic inhabitants of that district, in the Committee proposed to be formed, and that the Traverser acted, and voted in that election.

Gentlemen, that is the import of the first count, in the Indictment—There is a further charge in the second count, which abstracts itself from the consideration of the resolutions of the 9th of *July*, and states generally, that the Traverser acted in a Meeting held on the 31st of July, for the purpose of electing and appointing *five* persons to represent that district, in a future assembly, which is described, and is of the same nature, with that described, in the first count, that is, an Assembly formed with an intent to procure an alteration of matters, established by law, in Church and State, under pretence of petitioning.

Gentlemen, to establish these facts, three witnesses, have been examined ; the first of whom, *Mr. Huddleston*. speaks to the assembly of the 9th of July, he has told you, that among the persons, there assembled, there were persons of great property, and of high character, and respectability. He stated the resolutions, which were passed, one of which corresponded with the Indictment, as to the description of the persons to compose the assembly which was directed to be formed, and it appears upon his testimony, if you believe him, that such assembly was to prepare, a petition, on behalf of the Catholics, to promote a repeal of the penal laws, and that it was to consist of the Catholic Peers, their eldest Sons, Catholic Prelates, Baronets, and ten persons from each county in Ireland, and five persons from each parish in Dublin.

Gentlemen, his testimony goes directly to this matter, and, if you believe him, the meeting of the 9th of July, by their resolution, as charged in the indictment, directed such assembly to be formed, as the indictment charges. Then there are two witnesses deposing to the facts, of a meeting held at Liffey-street, on the 31st of July. I need not minutely state what these witnesses have said, as you have taken notes of their testimony—Each of them deposes to the same facts: many observations

Have been made upon what they said; it is enough for me to say, that both agree in the material circumstances, that an assembly met on the 31st of July, in the chapel in Liffey-street—that at that assembly it was proposed to appoint five persons to represent the Roman Catholic inhabitants of St. Mary's Parish, to present their petition, and to transact the other business of their parish, at the General Committee; and Gentlemen, you will observe that by the resolutions, stated by Mr. Huddleston, a Committee was to be formed consisting of Catholics, of whom ten were to be chosen from each county, and five from each parish in Dublin.—These five persons were to represent the Catholics of that parish in the General Committee. The witnesses then proceeded to shew, how that election took place; that it was proposed, that seven persons should be nominated, who should retire, and choose the five persons who were to serve; that seven persons were accordingly named; the Chairman naming the first, that person naming a second, and so on, until the number was complete. That these seven retired, and, after some time returned, with a list of names, that a question was put upon each name, and that Dr. *Sheridan*, was unanimously elected. The other 4 were also elected, some objection was made to one, on account of absence—but all the

rest were elected, unanimously.—Gentlemen, these witnesses have gone further, and told you, that some of those persons, upon being elected, accepted the trusts, and that the Traverser rose, and thanked the assembly, and promised to execute the trust reposed in him.

Gentlemen, these witnesses have been cross examined at great length, with a view, (and if Counsel have succeeded in that view, to your satisfaction, it will put an end to the cause), so to diminish, or destroy their credit, as to render you incapable of believing the facts to which they have sworn—Gentlemen, it does appear that the recollection of the two last witnesses is now represented to you, more full in the account of the resolutions and proceedings, described to you, than upon a former occasion, for they were both examined upon a former occasion; one of them states, that he has refreshed his memory by notes subsequently found, which upon the former occasion he had not.—These notes were produced, but were not read.—We know not their contents, and cannot judge of them;—but the character and conduct of the witness have been examined into by a laborious cross examination, I shall not go through it, but you Gentlemen will determine what effect it has had upon your minds; whether it so reduces the credit of the witnesses, as that

you cannot believe them in the facts, which they attest and which are necessary, to bring the charge home to the traverser.

Gentlemen, upon the part of the traverser. the case is rested upon an alleged defect, in the evidence, and upon a supposition that, if the facts be true, which the Counsel for the traverser do not admit, that no case of crime is made out against him.—Gentlemen, with regard to the weakness of the case on the part of the prosecution, you will judge whether you can reasonably doubt the truth of the facts, which have been sworn to; you will reflect and see, whether you can doubt what Mr. *Huddleston* stated, respecting the first meeting, its existence, and its acts; whether you can doubt the truth of the facts stated by the two other witnesses, relative to the second meeting, its acts, and the acts of the traverser.

Gentlemen, if you have a rational doubt not a mere capricious difficulty, but the rational doubt of sensible men, of the facts, which have been so sworn, you must acquit.

Gentlemen, if you have any rational doubt of the connection between the two assemblies, the first count will be out of the case; but you will recollect that the resolutions of the 9th of July, if you believe the witness, directs a Committee of

the Catholics of *Ireland*, to be formed. How that Meeting or Committee is to be formed, and that among the parts of its formation, are to be five persons from each parish in *Dublin*, and whether you can doubt, whether that election taking place twenty-two days after ; at which election, five were elected 1st Oct. You hear its object declared to be, to represent the Catholic Inhabitants of the parish at the general Committee, and at which election, if you believe the witness, the proclamation of government was mentioned as issued, or expected, on that day, to prevent the existence of such a meeting, or such an election ; and which Proclamation is admitted to have issued on that day ; whether these circumstances leave any rational doubt of the connection between the assemblies, will be matter for your determination.

Gentlemen, in addition to what I have already said, it is right to observe, what has been strongly put upon the part of the prosecution, that the facts so stated, by these witnesses, are represented to have passed in numerous assemblies, and the material facts sworn to, by those witnesses, are uncontradicted by any evidence. As to what they have stated, respecting the existence of those assemblies, if they did not meet at all, nothing could be easier, one would imagine, than to shew, that there were no such Meetings upon the 9th or

31st of July. If there were such meetings, and the witnesses misrepresented what passed at either of them, it must have been easy to produce numerous witnesses to contradict them. They themselves pointed out persons there in Court, who were present at the meeting *they* speak of.—What those witnesses have sworn upon this trial was well known to those concerned for the traverser, and they must have been aware that these witnesses would prove those facts. The former Trial had made their testimony public, and it is admitted and alledged on both sides, that the case comes before you, on the testimony of the same witnesses.

Gentlemen, you will consider the weight of the observation which has been made upon the non-production of evidence on the part of the traverser,—in my apprehension it well deserves your consideration.

Gentlemen, if these witnesses have satisfied you, beyond all rational doubt, that those assemblies met and acted in the manner, which the witnesses have described, it then becomes necessary that we should inform you, how the Law stands, as applicable to such Meetings, and their acts.—Gentlemen, the law has received from able Counsel, both upon this and upon a former trial, elaborate and able discussion; the subject has been carefully

considered by every one of us ; we have had repeated and frequent conferences upon it ; there has been no objection made, which has not been canvassed, and become, with us, an object of deliberate consideration, and upon the law, as applicable to this subject, I am authorised by my brethren to state, that no manner of doubt exists in our minds.

Gentlemen, the legal question arises upon the construction of an Act of Parliament, made in the year 1793, "entitled an Act to prevent the Election, or appointment of unlawful Assemblies, under pretence of preparing or presenting public Petitions, or other Addresses to his Majesty, or the Parliament." It is not imputed to the Travesser, that he has been guilty of any degrading, unworthy, or immoral act ; or any act illegal, abstracted from the consideration of the Act of Parliament, which I am going to state ; but the question will be, whether he has violated the provisions of that Act.

"Gentlemen, it is an act made in great political precaution, and with respect to this act, like all others, we, who sit here, not to alter, make, or correct the law, but to declare it, are to suppose that this, like all other laws, has been made upon due consideration, and upon principles of sound public policy and necessity. It is not for us

to oppose the declared will of Parliament ; to discuss the subject upon topics fit only for Parliamentary debate, or to set our understanding in competition with the wisdom of the Legislature ; but it is our duty to pronounce upon the law, as we find it and feel it ; and even though it may bear hard upon an individual, we are not to be influenced by that consideration ; but it is our duty to pronounce what the law is, in all cases whatever, however, we may in some, feel for the accused.

Gentlemen, this is an Act of Parliament, having for its object, not so much the *punishment* of the members of such assemblies, as are described in it, as the actual *prevention* of the existence of such assemblies ; it is not that a representative assembly is to meet, and that the officers of the law and Government are to wait and see, whether they will do any thing hostile to the laws ; but the object of the act is the *prevention* of a representative assembly, having such objects, as are mentioned in the statute, from ever meeting.—It declares, that if such assembly meets, it is an unlawful assembly ; and attacks the very commencement of its formation, with a view to prevent its existence.—It does not do this, upon the notion that such assemblies are always, and of necessity, mischievous ; that they cannot meet without doing wrong ; but it is a precautionary

act, and it recites that the election or appointment of assemblies, purporting to represent the people, or any description, or number of the people of this nation, under pretence of preparing or presenting petitions, complaints, remonstrances, declarations, and other addresses to the King, or to both or either of the Houses of Parliament, for altering of matters established by law, or redress of alledged grievances in Church and State, *may* be made use of to serve the end of factious, and seditious persons, to the violation of the public peace, and the great and manifest encouragement of riot, tumult and disorder. This preface of the act is not introduced, or accompanied by a statement, that such assemblies are in their own nature necessarily productive of mischief; but that such assemblies are readily capable, when met, of being turned by factious persons to improper or mischievous purposes, and, therefore, the statute has declared and enacted, that all assemblies, committees, or other bodies of persons elected, or in any other manner constituted, or appointed to represent, or assuming or exercising the right, or authority to represent the people of this realm, or any number or description of the people of the same, or the people of any province, county, city, town, or other district within the same, *under pretence of petitioning for, or in any*

other manner procuring an alteration of matters established by law in Church and State, are unlawful assemblies.

It then proceeds, if possible, to prevent the existence of such assemblies, and the means taken are by enacting that, if any person shall give, or publish, or cause or procure to be given, or published, any written or other notice of election, to be holden, or of any manner of appointment of any person, or persons, to be representative, or representatives, delegate, or delegates, or to act by any other name, or description whatever, as representative or representatives, delegate or delegates, of the inhabitants of any province, county, city, town, or other district within this kingdom, at any such assembly, shall be deemed guilty of a high misdemeanour ; from which it seems to us, that the Legislature has made it a distinct, and substantive offence to publish a notice of such intended election, and it equally makes it an offence to attend, and vote, and act at such election, and it seems to us, that this is a distinct and substantive offence in the parties so acting, the very moment such election is made, and before the assembly, to which the persons have been so elected, has actually met.—The statute then proceeds to except and provide, that nothing shall be construed to extend to, or affect elections to be

made by bodies corporate, according to their charters and usages, and also that nothing in the act contained, shall be construed in any manner to prevent or impede the undoubted right of his Majesty's subjects of this realm to petition his Majesty, or both Houses, or either House of Parliament, for the redress of any public or private grievance.

Gentlemen we have already, upon a former occasion, declared our opinion, upon the true construction of this law; we have, however, allowed further discussion upon it, by the Counsel for the Traverser; and I will advert, to most, or all of the objections, which have been made to the construction given by us, to the act.

It has been argued, that an assembly, to fall within the penalty of this act, must be a *representative* assembly, representing part of the King's subjects, and meeting, under pretence of petitioning, and the argument urges, that the meeting, must be under a *false* pretence of petitioning.

Gentlemen, in my apprehension, that construction would but little accord with the provisions and objects of the Act—the objection is founded upon the meaning of the word “pretence,” it cannot be denied, that the word “pretence,” in various instances, is used with various significations, according to the nature of the subject matter to which it is

applied; it occurs in various Acts of Parliament, in some instances, with the epithet, *false*; in others, simply, as here, “under pretence; and it is contended that in *all* instances where it occurs, especially where it means the motive of the mind, it must be understood as connected with the epithet, *false*,”—Instances of the use of this word where the epithet ‘*false*’ could not be intended, have been cited upon the part of the Crown from Acts of Parliament; instances have also been adduced, where the epithet ‘*false*,’ has by the Legislature been applied to it, where the Legislature did not choose to leave the word simple and at large, and an exceeding strong instance has been adverted to by the Counsel for the Crown, because it occurs in an Act made *in pari Materia*; the English Act of Parliament of Charles 2d, to prevent tumultuous meetings “under pretence” of petitioning the King, or the Parliament: *there*, most manifestly, the word, “*false*,” could not be understood; but in truth it is a word of very various significations, and is used in various Acts of Parliament, either simply, or with the epithet *false*, annexed to it, according to the purpose, for which it is intended. To suppose that where it means the motive of the mind, leading to an act, it must always mean “*false*,” does not appear to me to establish a general rule of construction, which can be supported by reason

or authority, or by fair observation, on all or any Act of Parliament, where the word occurs. Besides the instances, which have been alluded to, I am reminded, every day, of a particular instance, where the words, "under pretence," have been used by the Legislature, where it is not possible to annex the epithet "false," and where it so plainly signifies the motive of the mind, that you might with little injury to the phrase, and none to the sense, substitute *motive* in its place. I refer to an Act of Parliament of the very same date, as that in question, and which has been urged, by the Defendant's Counsel, to have passed on the same day with this Act in question, shewing that the same Parliament, and even the same men (for even with respect to that circumstance, some observation has been made, as has, if the word as used in the ancient statutes, had by modern use varied its meaning) made use of this word "pretence," where the epithet "false," could not be applied to it. I allude to an act of the year 1793, which gives various beneficial privileges to the Roman Catholics, upon the terms of swearing an oath, which is set out in the act of Parliament, and by that oath, which is administered here almost every day, every person who takes it, swears that he abjures, condemns, and detests, as unchristian and impious, the principle, that it is lawful to

murder, or destroy, or any ways injure any person whatever, *for, or, under the "pretence" of being a Heretick*; and that no act in itself unjust, immoral, or wicked, can ever be justified, or excused, *by, or under "pretence" or colour*, that it was done, either for the good of the Church, or in obedience to any ecclesiastical power whatsoever.

Now, one would be tempted to ask, whether any man of the thousands of all ranks and conditions, who have honestly and conscientiously taken that oath, ever connected the word "false," with the word "pretence" in that oath, and whether the Parliament in framing that oath, could possibly have meant the "*false* pretence" of being a Heretick, or the "*false* pretence" of being serviceable to the Church. It is used as synonymous with "colour," "cloak," under the allegation of." —It has been so taken by thousands of as honest men, as any in the community, without conceiving that the epithet "*false*" was understood. In those instances, it would be abused and monstrous to add it. In fact, you may apply to the word pretence, without injuring the sense in these instances, almost any epithet of bad import, except false. You may call it, a *base, wicked, impious, absurd, or foolish pretence*; but you cannot call it a *false* pretence; if you do, you make the sen-

tence nonsense. These instances answer what has been said by the very able Counsel for the Defendant, that whenever the word *pretence* is used, to designate a motive of the mind, that it must mean *false* pretence—for you might, in both these instances, substitute the word *motive*, without injury to the sense.

But I do not wish to be supposed to argue, that, because in these instances that I have mentioned, it is impossible to conceive the word “pretence” to mean *false* “pretence,” therefore, it conclusively follows, that the word cannot mean “false pretence,” in this Act which passed on the same day. Very far from it—it would be absurd to say, that any such conclusion would inevitably follow;—but as the word has various significations, though it should be admitted that it sometime may mean *false* pretence, those instances shew that it cannot be asserted always to have that signification, but that it may mean, and when used simply, often, if not generally, does mean, *colour of allegation*, abstracted from the truth or falsehood of it, *colour*, *cloak*, or *holding forth*, or other sense that might be put. But this I do say, that where a word has various significations, the fair way (in this instance, as in all others) to get at the actual sense, in which it is used, whether in Acts of Parliament or other writing, is an exa-

mination of the context, and if we find, as in the present case we do, that by construing the word *pretence*, to mean *false* pretence, we should make one half of the provisions of the Act impracticable to execute, and the remainder inefficient for obtaining its object, we must hold it impossible to construe the word pretence, to mean false pretence, in this Act.

The provisions of the Act for preventing the existence of such assemblies, for punishing the mere giving notice of an Election (of a nature *contrary to the Act*) to be held, the provisions for punishing those who shall vote, or act, in such election of representatives, the provision enabling Magistrates to disperse such assemblies if actually formed ; some of these provisions of the Act, (and these provisions comprize all the remedies the Act gives to the public) could not be executed, if the officers of the law must wait until it shall be ascertained by the conduct of the assembly so elected, whether, in reality, there be an intent to petition or not ; that is, whether the pretence of petition be true or false ; the truth or falsehood of the pretence could not be ascertained, until either the assembly had actually petitioned, or dissolved themselves without petitioning. The justification of the Magistrate or Officers of the Law must depend, not on their own acts, and the circum-

stances then existing, but must depend on the subsequent conduct of others, so also must the guilt of persons accused of acting at such election. And the mischief and danger, so clearly pointed out by the preamble of the statute, to the object of the act to prevent, would remain without remedy, mischiefs equally possible and practicable, whether such an assembly should or should not petition, or intend to petition; mischiefs not stated by the act, as in their own nature inevitably, and of necessity, flowing from such an assembly, but equally possible, and equally likely to happen. whether the *pretence* of petition be true or false.

In my apprehension, therefore, the argument, which requires that such an assembly should meet under a "*false* pretence," in order to bring them within the operation of this statute, has not the slightest weight, but goes, if submitted to, to make the act inoperative.

The true meaning of the statute is, that if they are representatives, (for representation of others is essential to bring such an assembly within the statute, and must be proved to the satisfaction of the Jury) and if they assemble with a view to procure an alteration of matters, established by law, in Church or State, (another essential circumstance to constitute the offence) even though that

effect was held forth to the world as designed to be procured by a petition, and really was so intended, or by whatever other means such effect might be intended to be produced, such an assembly falls within the description of the act.

Gentlemen, that this act was intended to be most comprehensive in its application to representative assemblies, in my mind, appears powerfully, from the saving which has been adverted to; where it declares assemblies to be unlawful, it saves and excepts the Knights, Citizens and Burgesses, elected to serve in Parliament, and the Houses of Convocation, duly summoned by the King's writ; the words, which the act has used to embrace representative assemblies, meeting for the purpose of procuring alterations of matters established by law, are so large, that, although it could not be conceived, that the Parliament intended to put down the House of Commons, or the Houses of Convocation, yet the words are large enough to embrace them, being representative assemblies, and having the power of procuring alterations in Church and State; and they are excepted out of the enactment, which one would think the subject itself would not render necessary; but it shews the vast extent of the words, which have been used, when Parliament thought fit to save from their operation, the House of Commons, and the Houses of Convocation.

Another objection has been made, founded upon the proviso at the end of the Act, saving a right of Petition, that it must save the right of petitioning tho' exercised by the representative assemblies.

Gentlemen, the act, certainly, has a proviso that any thing therein contained, shall not be construed in any manner to prevent, or impede the undoubted right of his Majesty's subjects, to petition his Majesty, on both or either Houses of Parliament.

Now, Gentlemen, if I were to push that exception, so far as to say, that the subject may petition, even in a mode or manner, which the act has provided against, I should make it so inconsistent, that the whole act would become inoperative. It is our duty so to construe acts of Parliament, as to give effect to every word, if we can, and in doing so, with respect to this particular act, it is impossible to hold, that it saves the right of petitioning, in a mode contrary to the provisions of the act, or otherwise, than as the act left that right *untouched*, just as the act in England, which prohibits the approaching the King, or the parliament, in a greater number, than is expressly limited, it saves the right of petitioning, not by numbers, to any amount, for then the act would do nothing, but as here, it leaves the rights of petition-

ing, as it was before, but prevents its being presented, in the one case, by an *excessive number*, and in the other being prepared or presented by a *Representative Assembly*—and it would be monstrous so to construe an act, as to allow the proviso, to countervail the whole of the enacting clauses, which it would, if it received the extensive construction, which has been contended for here.—It may have been the intention of Parliament, (and probably was) out of great caution to shew the Public, that the substantial, real right of petitioning, was not intended to be affected—the enactment prohibits one mode of petitioning, and the proviso saves all others.

It is also contended, that no representative assembly can fall within the act, if it be for *one single* object, that of Petition. It is contended that the character of the Assembly, declared to be an offence, must be taken to be—that of *representation* generally, or for numerous objects, but not of delegation for one particular act, and that such being the object here alluded to, it does not fall within the penalties of this statute.

On a former occasion we thought this argument had no solid weight in it, and that it was sufficiently answered, when it was shewn that the Assembly, which is the object of the statute, must be a representative assembly ;—that where

the assembly was *representative*, and met with the view, and for the object mentioned in the statute, it fell within the scope of this act, even although the *sole* object of that Assembly was a *petition*—a *single act*, where the object of the assembly was to procure an alteration of matters established by law, in Church and State—although the means by which it was to be procured, were confined to one single act—that of petition. The argument, in support of the objection, assumes that there cannot be a representation for one single act. But the act goes upon no such supposition; the offence in the Assembly is representation, or assuming to represent the people, or any number or description of them, under pretence of procuring by *Petition*, or otherwise, an alteration of matters established by Law, in Church or State, and *that*, under *what-ever* names the persons assembled, may give themselves, whether Delegates, Representatives, or any other description.

There is nothing in the Act that requires that this representation to make it criminal should be *general*; that none should fall within the description of *representative*, unless they assume all the Powers of a Parliament, or have in *express terms* many objects, or a great number of *means* for effecting one object confined to them.

To fall within the Act, the Assembly must be, or assume to be, *representative*—the Members of a representative Assembly, are representatives, under whatever designation they may be called.

The *Character* of the *Assembly* or its *Members*, is not made to depend on the number of its objects, on the *generality* or *particularity* of the trust reposed in them, but on the original constitution of the assembly, if it be elected, or appointed to represent any portion of the people, and has for its object the procuring such alteration of the laws, as the act mentions, though it holds out to the world, and *that truly*, no other means or intent of effecting that object, but a petition; it is a representative assembly, and its members are representatives, within the meaning of the Act; and with respect to the distinction taken between *delegates* and *representatives*, the act seems to use these terms as synonymous—it is immaterial by what names they shall designate themselves, if in fact they are to act *as representatives* in a *representative Assembly*, they fall within the Act, and may be described as representatives.

But if more than one object were necessary to form the character of a representative Assembly, under this Act, a witness, stating the resolution in Liffey-street, states one of these to have been to elect five persons to *represent* the Roman Catholic

Inhabitants of St. Mary's Parish, to present their Petition, and to transact the *other business* of the Roman Catholics of that Parish at the General Committee.

To suppose that this must be a *general representation*—that the assembly should represent *all* individuals—for *all* possible purposes, would be supposing, what the Act of Parliament never could have in contemplation at all. Supposing that it should be an assembly, assuming the *power* of the State!—Such an assembly wanted no particular enactment to put it down; nor was this Act necessary to declare its illegality—no man could doubt its illegality.

Gentlemen, I have thus thought it right to state the general grounds of our opinion, that such an assembly, as I have alluded to, falls within the meaning of this Act of Parliament, so far as the objections made to our construction of the Act, have on this occasion been argued on. But suffer me to say—at the same time, with great respect—that I do not throw out these observations to you, with a view of asking your opinion upon any one of them—but in answer to the arguments, which have been used at the Bar, upon the law of the case, and that the public mind may be satisfied, that *this Court retains the opinion which it did, upon a former occasion, with*

regard to the Law—certainly not calling upon the Jury to decide what the law is—but trusting that, in exercising their duty, they will consider themselves as acting under a similar obligation, as we do, in the discharge of ours. We are to give our opinion upon the *law*, and you are to decide upon the *facts*, according to the evidence, if you believe it applying the Law as declared to you to these facts.—That evidence shews that an *assembly*, collected early in July, directed a General Committee of the Catholics to be formed—if you believe the evidence, and have no rational doubt upon it, and that the meeting in Liffey-street, on the 31st of July, was in consequence of that previous meeting and to carry the resolutions of it into effect, and that the Traverser acted in such latter assembly, as the witnesses for the prosecution have mentioned, in voting and acting in the election of a person to be a representative in that General Committee, so directed by the resolutions of the 9th of July, and that, that General Committee had for its object an alteration of matters established by Law in Church and State, even although you should be of opinion, that the mode of effecting that alteration, was to be by Petition, in our opinion, the case is proved against the Traverser,

Whether you shall believe the witnesses or not, I have already told you is matter between you and

your consciences. We have stated to you the law, as applicable to the case, if you believe the witnesses; if you do not, you ought to acquit.

Gentlemen, you have heard from both sides, of a former verdict. With regard to that, and all other cases where verdicts are canvassed, I have always entertained the highest possible respect for the Verdict of a Jury—I always believe their verdict to be honest—and I firmly believe, that the verdict alluded to, was an honest verdict, founded in the conviction of the Jury. But, Gentlemen, it frequently happens in this Court, and in the other Courts of this Hall, that after a verdict has been found, a new trial has been directed in the *same* cause, and in such case the verdict so found, is by no means conclusive upon the subsequent Jury;—for, if it were, it would, in truth, be in vain to send a case to a second trial.

Gentlemen, you are told that the verdict alluded to, was found upon the testimony of the same witnesses. The observation is well founded, as to the identity of the witnesses. You will consider whether they have accounted for their testimony being, in some respects, more full than it appears to have been before.—It is not for me to say, whether the former verdict was right or wrong; it is not for us to say how the fact is. It is for you to act upon your own judgment and decide in

this case according to your own consciences, and not by the former verdict, unless your own conviction is the same as that of the former Jury.

Gentlemen, there is one matter more, and only one, which I think necessary to submit to your attention—that, in case you should believe the evidence (upon which supposition I have stated what the Law is—and upon the contrary supposition, have told you that you should acquit) it will then be necessary to have some information from you, and which you alone can give—that is, —to tell us, whether the election which took place in Liffey-street, was confined to the representatives of the Roman Catholic inhabitants, residing within the bounds of the city, strictly so called, or was intended to be extended to represent the Roman Catholic Inhabitants of the whole Roman Catholic Parish of St. Mary's, which extends into the County, this information we require for a question of future discussion; we call for your opinion as to the fact.

Gentlemen, with regard to the Evidence bearing upon that, it seems to stand thus:—The Resolution of the 9th *July*, directed that *five* persons should be chosen for each Parish in *Dublin*, and *ten* for each county; the Meeting at *Liffey-street* elected *five* persons; and the evidence of *Shepherd* and *M'Donough* is, that they elected them to repre-

sent the parish ; then it is for you to say, whether that election was, or was not, to comply with the election directed by the resolution of the 9th of July—an election to represent a parish within the city ;—and you will judge whether they meant to confine the election strictly to the city, or meant that it should represent the whole parish, part of which extends beyond the city, (the county being, by the resolution of the 9th of July, to be separately represented). You will judge of the meaning of the resolution, and the meaning of the parties, acting in the election, and upon them you will form your own conclusion.

Gentlemen, if you believe the evidence, you will find the Traverser Guilty :—and, if so, you will inform us, whether, in the election, the representation was confined to that part of the Parish, which is in the city, or extended to the part which lies in the county.

The Jury found the Traverser GUILTY, and that the election held in the Chapel of St. Mary's parish, in Liffey-street, intended to include the Roman Catholics of the Catholic parish of St. Mary's in the City of Dublin *only*.





An Act to prevent the Election or Appointment of unlawful Assemblies, under Pretence of preparing or presenting Public Petitions, or other Addresses to His Majesty, or the Parliament, passed A. D. 1793.

Whereas the election or appointment of assemblies, purporting to represent the people, or any description or number of the people of this realm, under pretence of preparing or presenting petitions, complaints, remonstrances, and declarations, and other addresses to the King, or to both or either houses of parliament, for alteration of matters established by law, or redress of alledged grievances in church and state, may be made use of to serve the ends of factious and seditious persons, to the violation of the public peace, and the great and manifest encouragement of riot, tumult, and disorder: Be it declared and enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in parliament assembled, and by the authority of the same, That all assemblies, committees, or other bodies of persons elected, or in any other manner constituted or appointed to represent, or assuming or exercising a right or authority to represent the people of

this realm, or any number or description of the people of the same, or the people of any province, county, city, town, or other district within the same, under pretence of petitioning for, or in any other manner procuring an alteration of matters established by law in church or state, save and except the knights, citizens, and burgesses elected to serve in the parliament thereof, and save and except the houses of convocation duly summoned by the King's writ, are unlawful assemblies; and it shall and may be lawful for any mayor, sheriff, justice of the peace, or other peace officer, and they are hereby respectively authorised and required, within his and their respective jurisdictions, to disperse all such unlawful assemblies, and if resisted to enter into the same, and to apprehend all persons offending in that behalf.

II. And be it further enacted, That if any person shall give or publish, or cause or procure to be given or published, any written or other notice of election to be holden, or of any manner of appointment of any person or persons to be the representative or representatives, delegate or delegates, or to act by any other name or description whatever, as representative or representatives, delegate or delegates of the inhabitants, or of any description of the inhabitants of any province, county, city, town, or other district within this kingdom, at any such as-

sembly; or if any person shall attend and vote at such election or appointment, or by any other means vote or act in the choice or appointment of such representatives or delegates, or other persons to act as such, every person who shall be guilty of any of the said offences respectively, being thereof convicted by due course of law, shall be deemed guilty of an high misdemeanor.

III. Provided always, That nothing herein contained shall extend or be construed to extend to or affect elections to be made by bodies corporate, according to the charters and usage of such bodies corporate respectively.

IV. Provided also, That nothing herein contained shall be construed in any manner to prevent or impede the undoubted right of his Majesty's subjects of this realm to petition his Majesty, or both houses, or either house of parliament, for redress of any public or private grievance.







